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No. ....

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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UNITED STATES OF AMERICA,

*Appellant.*

VS.

WILLIAM A. MAHAFFEY,

*Defendant.*

NELSON COOPER, Intervenor,

*Appellee.*

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Transcript of Record.

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Upon Appeal from the United States District Court  
for the District of Montana.

Filed

JAN 21 1915

F. D. Monckton,  
Clerk.



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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UNITED STATES OF AMERICA,

*Appellant.*

VS.

WILLIAM A. MAHAFFEY,

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Upon Appeal from the United States District Court  
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**Names and Addresses of the Solicitors of Record.**

Hon. T. W. GREGORY, Attorney General of the  
United States, of Washinton, D. C.

Hon. BURTON K. WHEELER, United States  
Attorney for the District of Montana, of Butte,  
Montana.

Solicitors for Plaintiff and Appellant.

Hon. JAMES A. WALSH, of Helena, Montana,  
Solicitor for Intervenor and Appellee.

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*In the District Court of the United States in and  
for the District of Montana.*

IN EQUITY—No. 949.

UNITED STATES OF AMERICA,

*Complainant.*

vs.

WILLIAM A. MAHAFFEY,

*Defendant.*

NELSON COOPER,

*Intervenor.*

BE IT REMEMBERED, that on December 7th,  
1909, the complainant filed its Bill of Complaint  
herein in the words and figures following, to-wit:

*In the Circuit Court of the United States, Ninth  
Circuit, District of Montana.*

UNITED STATES OF AMERICA,  
*Complainant.*

vs.

WILLIAM A. MAHAFFEY,  
*Defendant in Equity.*  
**In Equity.**

**BILL OF COMPLAINT.**

To the Honorable, the Circuit Court of the United  
States, Ninth Circuit, in and for the District  
of Montana:

The United States of America, by George W. Wickersham, Attorney General of the United States, and James W. Freeman, United States Attorney for the district of Montana, brings this bill of Complaint against William A. Mahaffey, a resident of the state of Montana, the defendant herein, and thereupon your orator complains and says:

**FIRST.**

That on and prior to the 27th day of April, A. D. 1899, your orator was the owner in fee simple of those certain lands situated in the state and district of Montana, and within the Helena Land District, and now within the land district of which the land office is at Great Falls, Montana, and particularly described as follows: The south half of the northwest quarter of section eleven; the south-

east quarter of the northeast quarter and the northeast quarter of the southeast quarter of section ten in township nineteen north range three west of the principal Montana Meridian, containing one hundred and sixty acres of land, situated, lying and being in the county of Cascade, state of Montana, and that on said 27th day of April, A. D. 1899, the said defendant, William A. Mahaffey, under and by virtue of the provisions of Section 2289 of the Revised Statutes of the United States, made and filed in the local land office of the United States, at Helena, in the state and district of Montana, his application No. 10048, to enter as a homestead the lands hereinabove described.

## SECOND.

That at the time of the filing by the said defendant, William A. Mahaffey, of his said homestead application No. 10048, to enter the above described land and premises and contemporaneously therewith, said defendant likewise filed in the said local land office of the United States, as required by law, his affidavit and statement in writing under oath, in which, among other matters and things, he stated and deposed that his said application to enter said land as a homestead was honestly and in good faith made for the purpose of actual settlement and cultivation, and that the said defendant would faithfully and honestly endeavor to comply with all the requirements of law as to said land and the residence and cultivation necessary to acquire the title to said land so ap-

plied for, and had not applied and did not apply to enter said lands for the purpose of speculation, but in good faith to make a home for himself. That thereupon said defendant then and there paid to the Receiver of the said local land office of the United States, at Helena, Montana, the sum of sixteen dollars, the same being the proper and legal fee then and there due and payable to the said Receiver upon the filing of said application aforesaid. That thereafter, on the 27th day of April, A. D. 1899, and upon such payment having been made as aforesaid, a receipt was then and there issued and delivered by the said Receiver of the said Helena Land Office to the said defendant for said amount of money so paid by him as aforesaid, and attached to and connected with said receipt was and is a notation setting forth in detail the requirements of the law to be observed and complied with by the said defendant in order to obtain title to said lands so applied for by him as aforesaid, and to be entered by him, as follows, to-wit: "Note—It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years of the expiration of the said five years, he must offer proof of his actual settlement and cultivation, failing to do which, his entry will be cancelled. If the settler does

not wish to remain five years on his tract, he can, at any time after fourteen months, pay for it with cash or land warrants, upon making proof of settlement and of residence and cultivation from the date of filing affidavit to the time of payment."

### THIRD.

That thereupon, in order to entitle the said defendant to obtain and procure from the said United States a patent for said tract of land, under the homestead laws of the United States, it was incumbent upon the said defendant, and he was required to make, actual settlement upon the said lands and reside thereon and cultivate the same for a period of five years from and after the time of the filing in said local land office at Helena, Montana of his said application and affidavit hereinbefore set forth, or in case said defendant did not desire to remain upon said land the full period of five years, to make payment for said land at the expiration of fourteen months from and after the filing of said application and affidavit, upon making proof before the Register and Receiver at the said local land office of the United States, at Helena, Montana, of settlement upon and cultivation of said lands by said defendant from the date of the filing of said application and affidavit down to the time of making such payment. That thereafter, on the 15th day of June, 1904, the said defendant appeared before C. H. Benton, then and there the Receiver of the United States Land Office at Great Falls, Montana, which said

land office was then and there the proper local land office for making of final proof upon said homestead entry hereinbefore mentioned, with his witnesses, Charles Wise and Charles Gilbert, and offered proof before the said Register and Receiver that he had settled upon said lands and premises and actually resided thereon and cultivated the same as required and within the meaning and intent of the said homestead laws of the said United States, and then and there gave, made out and signed his deposition and swore to the same before the said C. H. Benton, Receiver of the United States Land Office, as aforesaid, and at the same time filed and caused to be filed said affidavit and deposition and sworn statement, in the United States Land Office at Great Falls, Montana, said land office then and there being the proper United States Land Office of the land district wherein the said lands are situated, and then and there offered, presented and delivered and filed said affidavit, deposition and sworn statement so made, signed and sworn to by the said defendant, to and with the Register and Receiver of the said United States Land Office, as proof of the settlement and residence upon and the cultivation of the said lands and premises by the said defendant as required by law and the statute in such case made and provided, and the same were accepted by the said Register and Receiver of the said land office.



## FOURTH.

And your orator sheweth unto your honors that the said defendant in the said affidavit, deposition and sworn statement, made, signed and sworn to by him as aforesaid, and offered, presented, delivered to, and filed with, the said Register and Receiver, and accepted by them as proof of the settlement and residence of said defendant upon said lands and of the cultivation of the same by the said defendant, among other matters and things, testified and deposed that he had actually resided upon said lands since June, 1898, and had resided on said lands continuously since June, 1898; that he had placed improvements upon said land of the value of three hundred dollars and that he had constructed a house upon said land, sixteen feet by eighteen feet, and had constructed a wire fence around said property, and had constructed corrals, and the said defendant procured from each of said witnesses, Charles Wise and Charles Gilbert, affidavits, depositions and sworn statements taken before the said C. H. Benton, as aforesaid, made, signed and sworn to by the said witnesses before the said Receiver as aforesaid, to the same effect and corroborative and in aid of the said affidavit, deposition and sworn statement, made, signed and sworn to by the said William A. Mahaffey, and filed the same, together with said defendant's own affidavit, deposition and sworn statement, in the local land office of the United States, at Great Falls, and offered, presented and delivered the

same to the said Register and Receiver of the said land office, together with his own affidavit, deposition and sworn statement, as proof of the settlement and residence upon and cultivation of, the said lands by the said defendant, as required by law, and all of the said affidavits, depositions, testimony, and sworn statements of the said defendant and his said witnesses, so made, signed and sworn to, as aforesaid, and offered, presented and delivered to the said Register and Receiver of the said land office, as aforesaid, were, and each of them was, then and there taken and accepted by the said Register and Receiver of the said land office as proof of the settlement and residence of the said William A. Mahaffey upon the said premises. That on the said 23rd day of June, 1904, the said defendant paid to the Receiver of the said United States Land Office, at Great Falls, Montana, the sum of \$6.00, being the balance of payment for said land, as required by law, and thereupon the said Receiver then and there issued to the said defendant his final receipt No. 691 for the said moneys so paid <sup>to</sup> him by the said defendant in payment of said lands as aforesaid, and the Register of the said land office likewise then and there issued said defendant his certificate No. 691 for said lands, certifying that in pursuance of law, the said defendant had purchased said lands, and upon presentation of said certificate to the Commissioner of the General Land Office, said defendant should be entitled to receive a patent for said lands here-



inbefore more particularly mentioned and described; that thereafter such proceedings were had that on the 31st day of December, A. D. 1904, a patent was issued by the said United States to the said defendant for the said lands, which patent was duly delivered to the said defendant, William A. Mahaffey, and received by him.

#### FIFTH.

And your orator further showeth unto your honors that the said acceptance of the said affidavits, depositions and testimony of the said defendant and of his said witnesses, Charles Wise and Charles Gilbert, as proof of the settlement and residence of the said defendant upon said lands, and the cultivation of the same by him, as required by law, by the said Register and Receiver, and the issuance by the said Receiver of the <sup>said</sup> final receipt and the issuance of the said certificate of purchase by the said Register, as hereinabove mentioned and set forth, and the issuance of the said patent for the said tract of land by the United States, were had and done by the said officers of the said land office and the officers of your orator, the United States, in reliance by them, and each of them, upon the truth of the testimony and statements contained in the affidavits and depositions of said witnesses, Charles Wise and Charles Gilbert, and in reliance upon the good faith of the said defendant and his said witnesses in the premises, and not otherwise.

## SIXTH.

That the said affidavit and deposition of the said defendant, and the affidavits and depositions of the said witnesses, Charles Wise and Charles Gilbert, were, and each of them was, then and there false, fraudulent and untrue, as was then and there well known to the said defendant and to each of his said witnesses, and made with intent to deceive the officers of the United States and with intent to fraudulently obtain patent to the said land hereinabove described and by fraud and deceit to procure a patent for the said lands, by means of false and fraudulent testimony and statements made and contained in the said affidavits, depositions and testimony, in this, to-wit: That the said defendant had not established and did not establish residence upon said lands or any portion thereof during the month of June, 1899, or at any other time, or at all; that the said defendant had not, at the time of making his said proof and the filing of the same in the said land office, resided on said land or any part or portion thereof, continuously, or in any other manner, or at all, since the month of June, 1899, or at any other time, or at all, and had not then, or at any other time, built a frame house, sixteen by eighteen feet, and that the said defendant had not enclosed said lands with a fence, and that the said defendant, at the time of the filing of said depositions had not built any corral or fence whatever, and that the said defendant did not then and there, or

at any other time, have improvements upon the said land of the value of three hundred dollars, or any other value or amount whatsoever. That your orator alleges the fact to be that the said defendant never did make a settlement upon said lands, or any part thereof, and did not establish his residence upon said lands or any part thereof, and never did cultivate any part or portion thereof, and had no improvements thereon, and that each and every of the said statements so made by the said defendant and his said witnesses, as hereinbefore specifically mentioned and set forth, and which are contained in the said affidavits, depositions and testimony to prove settlement and residence by the said defendant upon said land, and the cultivation by said defendant of the same, as required by the homestead laws of the United States, are utterly false and fraudulent and untrue, in every particular, as he, the said defendant, then and there well knew.

#### SEVENTH.

And your orator further charges and alleges that the said testimony of the said defendant, William A. Mahaffey, as contained in said affidavit and deposition of said defendant, and the testimony of his said witnesses, Charles Wise and Charles Gilbert, as contained in said affidavits and depositions, made by them, as aforesaid, was false, fraudulent and untrue in the respects and in the several particulars as hereinbefore set forth, and the same were made, offered, presented and filed

as proof of the settlement and residence of the said defendant upon said lands and the cultivation of the same, as aforesaid, for the false and fraudulent purpose of imposing upon and deceiving the Register and Receiver of the said United States Land Office at Great Falls, Montana, and to cause and induce the said officers and agents of your orator to believe that the said testimony contained in said affidavits and depositions were true, and that the said defendant had, in fact, made and established a settlement and resided upon said tract of land, and had cultivated the same as by law required, for the purpose of obtaining and procuring, by means of fraud and deceit the issuance to said defendant of a patent of the United States for the said lands hereinbefore described.

#### EIGHTH.

And your orator further sheweth unto your honors that the said defendant, William A. Mahaffay, by means of the said false and fraudulent depositions and the false and fraudulent statement therein contained, given under the sanction and oath of the said defendant and his said witnesses, imposed upon and deceived the said officers and agents of the United States, and caused and induced the said officers and agents of the said United States to believe that the testimony and statements contained in said depositions were true, and that the said defendant had actually settled and resided upon said lands and cultivated the same in the manner and to the extent as stated in

said depositions, and that the said officers of your orator, the United States, supposing and believing the said testimony and statements contained in said depositions of said defendant and his said witnesses to be true, and relying upon the truth of the said testimony and statements, so falsely and fraudulently given and made by said defendant and his said witnesses, as aforesaid, and believing and supposing on the strength of said depositions and testimony that the said defendant had actually made settlement and established his residence upon said land and cultivated the same, in the manner and to the extent, and for and during the period of time as therein stated by him, the said defendant and his said witnesses, Charles Wise and Charles Gilbert, were wholly deceived and misled into allowing said proof to be filed and accepted and in permitting the issuance of said final receipt and the issuance of said certificate of purchase of said land, and of the United States patent therefor, by the said officers of the United States, as hereinbefore set forth, and delivering said patent to the said defendant, William A. Mahaffey.

#### NINTH.

And your orator further sheweth unto your honors, that the existence of the said patent, so fraudulently obtained and procured by the said defendant, as aforesaid, on its face entitles the said defendant to exercise the right of absolute ownership of and over the said lands hereinbefore mentioned and described, and assert a legal title to the



same, to which the said defendant is not entitled. That if the said patent remains uncanceled and in force, it can be used in fraud of your orator and all persons relying thereon, as a valid and subsisting conveyance of the legal title to said lands and premises above described.

All of which actions, doings, and pretences of the defendant are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of the complainant in the premises.

IN CONSIDERATION WHEREOF, and forasmuch as the complainant is remediless in the premises at and by the strict rules of the common law, and is relievable only in a court of equity where matters of this nature are properly cognizable and relievable, and, TO THE END, THEREFORE, that the said defendant, William A. Mahaffey, may full, true, direct, and perfect answer make to all and singular the matters hereinbefore stated and charged but not under oath (an answer under oath being hereby expressly waived) as fully and particularly as if the same were hereinafter repeated and he thereunto distinctly interrogated; and to the end that the said defendant and all and singular his agents, employes, and servants may be forthwith and forever restrained and enjoined from setting up and asserting or claiming any rights, privileges, benefits, or advantages under and by reason of said patent; and to the end that said patent so issued by the

complainant to the said William A. Mahaffey may be declared void and cancelled; and that the legal and equitable title to and right of possession of all and singular the lands at Paragraph I. herein described be restored and given to complainant; and that the complainant have such other and further relief in the premises as the circumstances of this cause may require and as to this honorable court may seem meet and proper, and as shall be agreeable to equity and good conscience.

May it please your honors to grant unto the complainant the Writ of Subpoena to be directed to the said William A. Mahaffey thereby commanding him at a certain time and under a certain penalty therein to be specified, personally to be and appear before this honorable court, and then and there to answer all and singular the premises and to stand to and abide such further order, direction, or decree therein as to this honorable court shall seem meet.

GEO. W. WICKERSHAM,

*Attorney General of the United States.*

JAS. W. FREEMAN,

United States Attorney, District of Montana.  
United States of America,  
District of Montana,—ss.

JAMES W. FREEMAN, being first duly sworn, deposes and says: That he is the regularly appointed, qualified and acting United States Attorney for the district of Montana, that he has read the foregoing bill of complaint and knows the con-

tents thereof, and that the matters and facts therein stated and alleged are true to the best of his knowledge, information and belief.

JAS. W. FREEMAN.

Subscribed and sworn to before me this 7th day of December, 1909.

GEO. W. SPROULE,

Clerk U. S. Circuit Court, District of Montana.

(Indorsed): Title of Court and Cause. Bill of Complaint. Filed and entered Dec. 7, 1909. Geo. W. Sproule, Clerk.

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Thereafter, on December 7, 1909, a subpoena in equity was duly issued herein in the words and figures following, to-wit:

(Subpoena.)

**UNITED STATES OF AMERICA.**

*Circuit Court of the United States, Ninth Judicial  
Circuit, District of Montana.*

**IN EQUITY.**

The President of the United States of America,  
Greeting: To William A. Mahaffey, Defendant.

You are hereby commanded that you be and appear in said Circuit Court of the United States aforesaid, at the court room in Federal Building, Helena, Montana, on the 3rd day of January, A. D. 1910, to answer a Bill of Complaint exhibited against you in said court by the United States of America, complainant and to do and receive what the said court shall have considered in that behalf. And this you are not to omit, under



the penalty of Five Thousand Dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 7th day of December, in the year of our Lord one thousand nine hundred and nine and of our Independence the 134th.

GEO. W. SPROULE,  
Clerk.

MEMORANDUM PURSUANT TO RULE 12,  
SUPREME COURT U. S.

You are hereby required to enter your appearance in the above suit on or before the first Monday of January next, at the Clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken *pro confesso*.

GEO. W. SPROULE,  
Clerk.

GEO. W. WICKERSHAM,  
U. S. Attorney Genl.,  
J. W. FREEMAN,  
U. S. Attorney, Helena, Montana.  
Solicitors for Complainant.

United States Marshal's Office,  
District of Montana.

I hereby certify that I received the within writ on the 7th day of December, 1909; was unable to find within named defendant in the district of Montana.

ARTHUR W. MERRIFIELD,  
U. S. Marshal.  
By Scott N. Sanford,

Deputy.

(Indorsed): Title of Court and Cause. Subpoena in Equity. Filed Jan. 24th, 1910. Geo. W. Sproule, Clerk. By C. R. Garlow, Deputy Clerk.

Thereafter, on April 5th, 1909, a petition for an order directing service of subpoena in equity to be made by publication was duly filed herein in the words and figures following, to-wit:

IN EQUITY—No. 949.

*In the District Court of the United States, District of Montana.*

UNITED STATES OF AMERICA,

*Complainant.*

vs.

WILLIAM A. MAHAFFEY,

*Defendant.*

### PETITION.

Comes now the complainant, the United States of America, by S. C. Ford, Assistant United States Attorney for the District of Montana, and shows unto this Honorable Court that heretofore, to-wit, on the 7th day of December, A. D. 1909, complainant filed its bill of complaint against the above named defendants for the purpose of obtaining a decree from the court decreeing and adjudging null and void a certain United States patent fraudulently obtained from said complainant for the south half of the northwest quarter of section eleven; the southeast quarter of the northeast quarter and the northeast quarter of the south-

east quarter of section ten in township nineteen north, range three west of the principal Montana meridian, containing an area of one hundred and sixty acres, more or less, which said land is fully mentioned, set forth and described in said complainant's bill of complaint on file herein, and to which reference is hereby made.

That thereafter, on the 7th day of December, A. D. 1909, a subpoena was duly issued, addressed and directed to said defendant and placed in the hands of the United States Marshal for the District of Montana for service upon said defendant, and whose return upon said subpoena shows that after diligent search and inquiry the said defendant could not be found in the District of Montana; that he has <sup>made</sup> inquiries and has been unable to learn his address; that the said defendant is not an inhabitant of nor could be found within the State and District of Montana, and that the said defendant has not voluntarily appeared in this action and that his residence is unknown to complainant, and that said service of subpoena cannot be had or obtained upon said defendant within the State and District of Montana, and that personal service cannot be had upon said defendant for the reason that his whereabouts are unknown.

WHEREFORE your petitioner prays that an order be made and granted by this Honorable Court, requiring and directing said defendant, William A. Mahaffay, to appear and plead, answer or demur to said bill of complaint by a day certain

to be fixed and designated by the court, and that said order be published in the Montana Daily Record as required by law.

S. C. FORD,

Assistant U. S. Attorney.

United States of America,

District of Montana,—ss.

S. C. FORD, Being first duly sworn, deposes and says that he is a duly appointed, qualified and acting Assistant United States Attorney for the District of Montana; that he has read the foregoing petition and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

S. C. FORD.

Subscribed and sworn to before me this 5th day of April, A. D. 1912.

GEO. W. SPROULE,

Clerk.

(Indorsed): Title of Court and Cause. Petition filed April 5, 1912. Geo. W. Sproule, Clerk.

Thereafter, on July 6th, 1912, an affidavit of publication of subpoena was duly filed herein in the words and figures following, to-wit:

**AFFIDAVIT OF PUBLICATION.**

State of Monana,

County of Lewis and Clark,—ss.

R. L. FISK, being duly sworn, says he is foreman of The Montana Daily Record, a daily newspaper printed and published at Helena, Lewis and Clark County, Montana; that it is a newspaper of

general circulation in said county and state, and that the annexed, being U. S. of America vs. Wm. A. Mahaffey, Equity Order No. 949, was published in said newspaper, and not in a supplement thereof, and is a true copy of the notice as it was published in the regular and entire issue of said paper for a period of 6 consecutive weeks (one time a week), commencing on the 10th day of April, 1912, and ending on the 15th day of May, 1912, and that said newspaper was regularly distributed to its subscribers during all of said period.

R. L. FISK, Foreman.

Subscribed and sworn to before me this May 16, 1912.

(Notarial Seal)

J. D. CONRAD,

Notary Public for the State of Montana, residing at Helena, Montana. My commission expires December 12, 1914.

No. 949. IN EQUITY. ORDER.

*In the District Court of the United States, District of Montana.*

UNITED STATES OF AMERICA,

*Complainant.*

vs.

WILLIAM A. MAHAFFEY,

*Defendant.*

---

It having been made to appear in the above cause that the defendant William A. Mahaffey is not a resident of or within the state and district of Montana and cannot be found after due and diligent



search and inquiry within the said state and district, and that the whereabouts of said defendant are unknown, and that personal service of process in this court cannot be had or obtained upon the aforesaid defendant within the said state and district of Montana, and that personal service upon said defendant is not practicable for the reason that his whereabouts are unknown; and application having been made to this court pursuant to section 8 of the act of March 3, 1875, for an order of this court, requiring and directing said defendant to appear and plead, answer or demur to said complainant's bill of complaint on file herein by a day certain to be fixed and designated by this court; and it appearing to the court that said suit was commenced by complainant to enforce an equitable claim to land situated in the state and district of Montana and more particularly described in complainant's bill of complaint on file herein, to which reference is hereby made, said suit being brought for the purpose of cancelling and annulling a certain United States patent fraudulently obtained from said complainant by William A. Mahaffey, for the south half of the northwest quarter of Sec. 11; southeast quarter of the northeast quarter and the northeast quarter of the southeast quarter, Sec. 10, Twp. 19, N. R. 3 West, M. P. M.

Now, therefore, it is ordered that the said application be, and the same is, hereby granted, and you, the said William A. Mahaffey, are hereby ordered, required and directed to be and appear in the said

district court, in said district, on the 3rd day of June, A. D. 1912, then and there to plead, answer or demur to said complainant's bill of complaint exhibited against you in said court by said complainant, the United States of America, to which said bill of complaint you are hereby referred, and to do and receive what the said court shall have considered in that behalf; and

It is further ordered that this order be published in the Montana Daily Record, a newspaper published at Helena, in the county of Lewis and Clark, state and district of Montana, being a newspaper of general circulation and the most likely to give notice to said defendant, once a week for six consecutive weeks.

Dated this 5th day of April, A. D. 1912.

GEO. M. BOURQUIN,

District Judge.

J. W. FREEMAN,

U. S. Attorney, District of Montana.

S. C. FORD,

Asst. U. S. Attorney, District of Montana.

Helena, Montana. First publication April 10, 1912.

(Indorsed): Title of Court and Cause. Affidavit of Publication. Filed and entered July 6, 1912. Geo. W. Sproule, Clerk.

Thereafter, on March 26th, 1915, an order *pro confesso* as to defendant William A. Mahaffey was duly filed and entered herein in the words and figures following, to-wit:

*In the District Court of the United States, District  
of Montana.*

UNITED STATES OF AMERICA,

*Complainant.*

vs.

WILLIAM A. MAHAFFEY,

*Defendant.*

**ORDER PRO CONFESSO.**

It appearing that an order was duly made in the above entitled cause on the 9th day of December, 1909, requiring and directing the said defendant to appear in said district court of the United States, in the city of Helena, state and district of Montana, therein to plead or answer to plaintiff's bill of complaint exhibited against said defendant in said court by the plaintiff, and to do and receive what the court should consider in said behalf; and

It further appearing that said order could not be served upon said defendant, and that an order directing the publication of process be had upon said defendant was duly made and entered on the 5th day of May, 1912, and

It further appearing that said order so made as therein required and directed was served upon said defendant by publication, pursuant to said order so made on said 5th day of May, 1912; and

It further appearing that said defendant has not appeared either in person or by counsel, and that the said defendant has failed to plead or answer said bill of complaint, and the time for so doing



having expired;

NOW, THEREFORE, upon motion of Burton K. Wheeler, United States Attorney for the district of Montana, and solicitor for the plaintiff;

IT IS ORDERED that the bill of complaint in said cause be taken *pro confesso* as against the defendant, William A. Mahaffey, in accordance with the rules in such case made and provided.

B. K. WHEELER,

United States Attorney.

(Indorsed): Title of Court and Cause. Order *Pro Confesso*. Filed March 26th, 1915. Geo. W. Sproule, Clerk. By Harry H. Walker, Deputy. Clerk.

Thereafter, on Sept. 4th, 1912, a petition in intervention was duly filed herein in the words and figures following, to-wit:

*In the District Court of the United States, for the  
District of Montana.*

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UNITED STATES OF AMERICA,

*Complainant.*

vs.

WILLIAM A. MAHAFFEY,

*Defendant.*

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**PETITION IN INTERVENTION.**

To the Honorable, the Judges of the above named court:

The petition of Nelson Cooper, a citizen and resident of Montana, humbly complaining of the

United States of America, plaintiff in the above entitled cause, would show unto your honors:

That the plaintiff in the above entitled cause did, on the 7th day of December, 1909, file its bill in this cause, wherein it set forth that prior to the 27th day of April, 1899, it was the owner of the south half of the northwest quarter of section eleven, the southeast quarter of the northeast quarter, and the northeast quarter of the southeast quarter of section ten, in township nineteen, north of range three west, principal meridian of Montana, in Cascade County, Montana, containing one hundred and sixty acres;

That on said date William A. Mahaffey made application to enter said lands under the homestead laws of the United States; that the said Mahaffey presented an application and affidavit, setting forth under oath that the said entry was made in good faith for the purpose of settlement and cultivation.

That it was incumbent upon the said Mahaffey to reside upon and cultivate said land for a period of five years; that on the 15th day of June, 1904, the said Mahaffey appeared before the United States Land Office at Great Falls, Montana, for the purpose of making final proof, and with the witnesses, Charles Wise and Charles Gilbert, offered proof, setting forth among other things that he had resided upon said land since June, 1898, and placed improvements thereon of the value of three hundred dollars, constructed a house 16x18 feet, and constructed a wire fence around said property and

had constructed corrals, and which affidavit was corroborated by the affidavits of said Charles Wise and Charles Gilbert;

That the said officers of the said land office, relying upon the said affidavits, issued a certificate to said Mahaffey, setting forth that he would be entitled to a patent for said land.

And it is further set forth in said bill of complaint that the said affidavits were false, fraudulent and untrue, which was then and there well known to the said Mahaffey and each of said witnesses, and the same were made for the purpose of deceiving the officers of the United States, and fraudulently obtaining patent for said lands, and that the said Mahaffey had not settled upon said lands; had not resided thereon, and had not built a house or placed improvements upon said lands, as set forth in said affidavits;

That by means of said affidavits, the officers of the land office were deceived and misled into allowing and accepting final proof and permitting issuance of final receipt, and that thereafter a patent was issued for said lands to the said Mahaffey, and the said complainant prays that patent issued for said lands be declared void and cancelled, and for other and further relief; all of which fully appears in the bill of complaint herein, and to which reference is hereby made as though the same had been set forth herein in full;

That service of subpoena in said cause was made upon William A. Mahaffey by publication, and the

said Mahaffey has not made any appearance therein;

That your petitioner claims an interest in said lands and premises, as follows, to-wit;

That after the making of the final proof, as aforesaid, your petitioner, in good faith and for a valuable consideration, paid by him to William A. Mahaffey and without any notice or information that the said William A. Mahaffey had not in all things complied with the laws of the United States in procuring title to said lands and without notice or information that the complainant herein claimed that the said Mahaffey had not, in all things, complied with the law, in relation to residing upon, improving and procuring title to said land, purchased the said land from the said William A. Mahaffey, and the said William A. Mahaffey executed and delivered to your petitioner a deed, wherein and whereby he conveyed to him all and singular the lands and premises mentioned and described in the complaint and hereinbefore set forth.

And your petitioner further shows that at the time he so purchased said land he did not have any notice or information that the said Mahaffey had not in all things complied with the laws of the United States, with reference to procuring title to Government land, or that the Government or its officers claimed that the said Mahaffey had not in all things complied with the law, and your said petitioner thereupon purchased the said lands from the said Mahaffey and paid him a valuable

consideration therefor, and received and accepted a deed conveying said land to him, and he ever since has been, and now is, the owner thereof;

That thereafter he caused a contract to be made and entered into to sell and convey the said lands to George Heaton, and the said George Heaton, in good faith and without notice or information that the said Mahaffey had not, in all things, complied with the law, purchased and agreed to purchase said lands for a valuable consideration paid to this petitioner.

And your petitioner further shows he is under the age of twenty-one years, and has no general guardian.

WHEREFORE, Your petitioner prays that he may be allowed to intervene in this suit and file his answer to the bill of complaint herein and such other pleadings as may be advisable, which answer is herewith submitted, and that a guardian ad litem be appointed, and for such other and further order as to the court shall seem just.

NELSON COOPER,

Petitioner.

JAMES A. WALSH,

Solicitor for Petitioner.

State of California,

County of San Diego,—ss.

NELSON COOPER, being duly sworn, says: That he is the foregoing named petitioner; that he has read the foregoing petition, and the same is true of his own knowledge, except as to those



matters stated on information and belief, and as to those matters he believes it to be true.

NELSON COOPER.

Subscribed and sworn to before me this 30th day of July, 1912.

(Seal)

MARY R. SCHUPP.

Notary Public in and for the State of California, residing at San Diego, California. My Commission expires January 14, 1913.

Service admitted and copy received Aug. 31, 1912.

J. W. FREEMAN,

U. S. Attorney.

(Indorsed): Title of Court and Cause. Petition in Intervention Nelson Cooper. Filed Sept. 4th 1912. Geo. W. Sproule, Clerk. By C. R. Garlow, Deputy.

Thereafter, on December 20th, 1912, an amended answer of Intervenor was filed herein in the words and figures following, to-wit:

*In the District Court of the United States in and  
for the District of Montana.*

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UNITED STATES OF AMERICA,

*Complainant.*

vs.

WILLIAM A. MAHAFFEY,

*Defendant.*

and

NELSON COOPER,

*Intervenor.*

**AMENDED ANSWER OF INTERVENOR.**

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Now comes the Intervenor, Nelson Cooper, leave of the court being first had and obtained, and as an amended answer to the Bill of Complaint herein:

I.

Admits the allegations contained in paragraphs one and two.

II.

Admits the allegations contained in paragraph three, except as to residence, and alleges the same was as stated in the affidavit referred to.

III.

Answering paragraph four, Intervenor says he has not any knowledge or information, as to the particular matters and things set forth and described in said paragraph, but admits that certain testimony and affidavits were subscribed to and delivered to the Register and Receiver of the United States Land Office at Great Falls, Montana, and there was issued to said Mahaffey a final certificate, and thereafter such proceedings were had that, on the 31st day of December, 1904, a patent was issued by the United States of America to the said William A. Mahaffey for the said lands, which patent was duly delivered to the defendant, William A. Mahaffey and received by him.

IV.

Answering paragraph five, intervenor admits that final certificate and patent were issued to said William A. Mahaffey for said lands.

## V.

Answering paragraph six, intervenor denies that he has any knowledge or information as to the charges that the said affidavits and testimony were false, fraudulent or untrue, or used with intent to fraudulently obtain patent from the Government of the United States, or of any other matters and things set forth in said paragraph, and therefore denies the same and each thereof, and demands proof of the same.

## VI.

That as to the allegations contained in paragraph seven, intervenor denies that he has any knowledge or information thereof sufficient to form a belief, and therefore denies the same, and each thereof, and demands proof of the same.

## VII.

And answering paragraph eight, intervenor admits that the officers of the United States Land Office relied upon and believed the testimony contained in said affidavits, but as to the charges that the statements contained in said affidavits were false or fraudulent, intervenor denies that he has any knowledge or information thereof sufficient to form a belief, and therefore denies the same, and demands proof thereof.

## VIII.

Admits that the patent aforesaid entitles the defendant and his grantees to the right of absolute ownership of said lands and to assert legal title thereto.



Denies that the same will be used to the damage or detriment of the plaintiff herein.

### IX.

And further answering said Bill of Complaint, intervenor avers:

That after making final proof on said lands by the said William A. Mahaffey, and while he was in possession thereof, this intervenor, in good faith and for a valuable consideration, to-wit: More than two hundred dollars, paid by him to said William A. Mahaffey and without any notice or information that the said William A. Mahaffey had not, in all things, complied with the law of the United States in procuring title to said lands, and without notice or information that the complainant herein claimed that the said Mahaffey had not, in all things, complied with the laws of the United States, in relation to residing upon, cultivating and procuring title to said lands, purchased the said lands from the said William A. Mahaffey, and the said William A. Mahaffey executed and delivered to this intervenor a deed, wherein and whereby he conveyed to him all and singular the lands and premises mentioned and described in the Bill of Complaint herein, and the said deed was so delivered and the said money so paid.

And this intervenor, further answering, says that at the time he so purchased said lands, received said deed and paid such money, he did not have any notice or information that the said William A. Mahaffey had not, in all things, complied

with the laws of the United States, with reference to procuring title to Government land, or that the government, or its officers, claimed that the said Mahaffey had not, in all things, complied with the law, and this intervenor thereupon, in good faith, purchased the said lands from the said Mahaffey and paid him a valuable consideration therefor, as aforesaid, and received and accepted a deed, conveying said lands to him; all without the notice or information that the said Mahaffey had not in all things, complied with law, in procuring title to said lands, or that the complainant herein claimed that there was any fraud committed by the said Mahaffey in procuring title to said lands;

That thereafter he caused a contract to be made and entered into to sell and convey said lands to George Heaton, and the said George Heaton, in good faith and without notice that the said Mahaffey had not, in all things, complied with law, in obtaining title to said lands, and without notice that the complainant herein claimed that there was any fraud committed by the said Mahaffey in obtaining title to said lands, entered into a valid and binding contract on his part, and agreed to purchase said lands for a valuable consideration, which was paid to this intervenor by the said Heaton before receiving any notice that the complainant herein claimed there was any fraud committed by the said Mahaffey in obtaining title to said lands;

That said George Heaton is in possession of and owns said lands under said contract, and is a neces-

sary party-defendant herein.

WHEREFORE, Intervenor demands judgment that the suit be dismissed, and for his costs and disbursements herein.

JAMES A. WALSH,  
Solicitor for Intervenor.

Service of the foregoing admitted and copy received Dec. 18, 1912.

J. W. FREEMAN,  
Solicitor for Plaintiff.

(Indorsed): Title of Court and Cause. Filed and entered Dec. 20, 1912. Geo. W. Sproule, Clerk.

And thereafter, on December 23rd, 1912, replication was duly filed herein in the words and figures following, to-wit:

*In the District Court of the United States, District of Montana.*

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UNITED STATES OF AMERICA,  
*Complainant.*

vs.

WILLIAM A. MAHAFFEY,  
*Defendant.*

and

NELSON COOPER,  
*Intervenor.*

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REPLICATION TO THE SEPARATE AND AMENDED  
ANSWER OF THE INTERVENOR.

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This replicant, saving and reserving to itself all

and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of said said intervenor, and for replication thereunto sayeth that it does and will ever maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by said intervenor, and that the answer of said intervenor is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, confessed or avoided, traversed, or denied is true; all which matters and things this replicant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly as in and by its said bill has already prayed.

J. W. FREEMAN,

United States Attorney, District of Montana.

Due service of the within replication acknowledged and true copy thereof received this 20th day of December, 1912.

JAMES A. WALSH,

Attorney for Intervenor.

(Indorsed): Title of Court and Cause. Replication. Filed Dec. 23, 1912. Geo. W. Sproule, Clerk. By C. R. Garlow, Deputy.

Thereafter, on July 31, 1915, decree was filed and entered herein in the words and figures following, to-wit:

(DEGREE.)

*In the District Court of the United States in and  
for the District of Montana.*

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UNITED STATES OF AMERICA,

*Complainant.*

vs.

WILLIAM A. MAHAFFEY,

*Defendant.*

and

NELSON COOPER,

*Intervenor.*

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This cause came on to be heard at this term, and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz.:

That the complainant take nothing herein, and that said suit be, and the same is, hereby dismissed, upon the merits.

Dated this thirty-first day of July, A. D. 1915.

GEO. M. BOURQUIN,

Judge.

(Indorsed): Title of Court and Cause. Decree. Filed and entered July 31, 1915. Geo. W. Sproule, Clerk. By C. R. Garlow, Deputy.

Thereafter, on July 30th, 1915, the Court's decision was duly rendered and filed herein in the words and figures following, to-wit:

**(OPINION.)**

*In the District Court of the United States, District  
of Montana.*

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UNITED STATES OF AMERICA,

*Plaintiff.*

vs.

WILLIAM MAHAFFEY, et al.,

*Defendants.*

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Herein, the court finds that the allegations of fraud, set out in the complaint, are not proven. And therefore the court concludes that the suit should be dismissed.

BOURQUIN, J.

**MEMO.**

In these suits to cancel United States land patents because secured by fraud, the presumptions are that the patentee did all required to secure patents and that they were guilty of no fraud, and the burden is on the Government to prove the fraud charged by evidence in quantity and quality that commands respect and produces conviction, or cancellation will not be decreed. The respect due to Government grants, over the seal of the United States, and the stability of titles dependent thereon, demand no less.

See U. S. v. Stinson, 197 U. S. 204,

U. S. v. Clark, 200 U. S. 608.

In the instant suit the burden is not sustained. The proof or evidence fails to measure up to the



standard. Strong suspicion may exist, but that is not the requisite proof and does not suffice.

It was apparent upon the face of the final proof the land involved was poor, the entryman poor, and his proof poor. But it satisfied the Government as compliance in good faith with the requirements of the homestead law, and patent issued in December, 1904. It is a case of a single man and common laborer, who worked for others.

The land was remote from public travel and neighbors. The presumption is though working for others and largely absent from the land, the defendant entryman made it his *home*. This well might be, though the Government witnesses in whatever occasional passages over the land they made may never have seen him nor have seen little evidences of inhabitancy. Their testimony is negative, their opportunities for observation few, their recollection poor, their testimony hesitant and drawn out, modified, strengthened and shaped by leading questions. Little credibility and weight can be given it in the main.

In certified copies from the General Land Office introduced by plaintiff, appear affidavits apparently from all the Government's witnesses at this trial. True, the *affidavits* were not expressly offered, but under the circumstances the court notes them. They inspired this suit. W. L. Kinsey made one in 1906 wherein he states he first saw the land in November, 1905, 17 months after final proof. He made another in 1909 wherein he

states he was on the land "within a few months *after* final proof," evidently *intended* to describe his *first* knowledge. At the trial he states he was first on the land in April or May, 1904, and *before* final proof. Strange, how Kinsey's knowledge increased as time passed! Such witnesses should not be used by any one—especially not by the Government. Gardipee, in an affidavit made in 1904, says the entryman's house had no roof until 1904, and he had frequently seen Cooper on or near the land. At trial he says the roof was on the house when he first saw it in 1902, and he never saw Cooper on or in vicinity of the land.

Gardipee, Jr., in an affidavit made in 1909, says he had seen Cooper on and near the land many times, and at the trial says he never saw Cooper on the land and only saw him on his, Cooper's, own land  $\frac{3}{4}$  mile away.

The testimony of Cooper, Kirkland, Loss and Wise makes it to appear the entryman's house was habitable and by him inhabited before final proof. Wise lived in it with him for a short time. This must have been before final proof, for it was when Wise and the entryman built the reservoir, and that seems to have been before final proof. The entryman sold to the intervenor on the day of final proof and shortly left the country. It is not reasonable the entryman would build a reservoir after he sold the land. If Mahaffey, entryman, lived in the house then, unknown to the Kinseys and Gardipees, if the house was habitable then, it de-

stroys the value of their testimony insofar as such testimony denies residence and habitability in earlier years of which they know nothing or their opportunities of knowing were no better. The negative testimony of the Government in respect to the entryman's residence, for only *part* of the residence period, certainly does not so far outweigh (if it outweighs it at all) the presumption that the entryman resided upon the land *all* the required 5-year period *and* the defense's affirmative testimony to the point, that it satisfies the rule that alone warrants a decree of cancellation. It may be the fencing is not equal to that set up in the final proof, but in view of the land, the entryman, the final proof, and all else, that is not very material. "All fenced" in the proof is not a statement that there was "a wire fence constructed around the property," as charged in the complaint. The bluffs of ravines and other <sup>natural</sup> ~~material~~ obstructions may fence land. If the exact truth had been stated in respect thereto in the final proof, it is not probable the patent would not have issued. Fencing is not a statutory requirement as is residence—home—but only goes to show good faith in the matter of residence and use—cultivation or grazing. The entryman grazed the land, presumably and by proof at this trial, to the extent of his stock and necessities. Furthermore, while suspicion may attach to the transfer to the intervenor (if fraud had been made out), upon his evidence and that in his behalf he ought to be held a *bona fide* pur-

chaser. The purchase may have been of unbusiness-like quality, but the like is often done. Even good traders often take much on trust—place confidence upon or in unlikely men and statements.

The evidence herein (aside from the affidavits which though the court has noted it does not consider in determining credibility and weight) does not satisfy and persuade that the fraud alleged is proven; and were it otherwise, the intervenor satisfies and persuades that he is a *bona fide* purchaser entitled to protection.

(Indorsed): Title of Court and Cause. Memo. Filed July 30, 1915. Geo. W. Sproule, Clerk. By Harry H. Walker, Deputy.

Thereafter, on November 22nd, 1915, notice of motion to approve statement of evidence on appeal was duly filed herein as follows, to-wit:

*In the District Court of the United States, District  
of Montana.*

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UNITED STATES OF AMERICA,

*Complainant.*

vs.

WILLIAM MAHAFFEY,

*Defendant.*

NELSON COOPER,

*Intervenor.*

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NOTICE (OF MOTION TO APPROVE STATEMENT OF  
EVIDENCE ON APPEAL.)

To James A. Walsh, Esq., Attorney for Nelson,

Cooper, Intervenor in the above entitled action:

You will please take notice, that the undersigned, solicitor for the complainant and appellant herein, has this day lodged with the Clerk of the aforesaid court complainant's statement or proposed record of the evidence on appeal herein, and that at Helena, in the state and district of Montana, on the 30th day of November, 1915, at the hour of ten o'clock A. M., or as soon thereafter as counsel can be heard, the undersigned will ask the Court or Judge to approve the aforesaid statement of the evidence on appeal herein.

B. K. WHEELER,  
United States Attorney, District of Mon-  
tana, Solicitor for Complainant.

Due service of the foregoing notice is hereby admitted this 22nd day of November, 1915.

JAMES A. WALSH,  
Solicitor for Intervenor.

(Indorsed): Title of Court and Cause. Notice.  
Files Nov. 22, 1915. Geo. W. Sproule, Clerk.

Thereafter, on December <sup>21</sup>....., 1915, a statement of the evidence on appeal was duly approved and filed herein in the words and figures following, to-wit:

*In the District Court of the United States, District  
of Montana.*

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UNITED STATES OF AMERICA,

*Defendant.*

vs.

WILLIAM MAHAFFEY,

*Defendant.*

NELSON COOPER,

*Intervenor.*

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**STATEMENT OF THE EVIDENCE.**

BE IT REMEMBERED that the above entitled action came regularly on for trial before the above entitled court, on the 1st day of July, 1915, the plaintiff being represented by Frank Woody, Assistant United States Attorney, and the intervenor, Nelson Cooper, being represented by James A. Walsh, Esq.,

And that thereupon the following proceedings were had and the following testimony was given by the respective witnesses, to-wit:

**(TESTIMONY OF W. L. KINSEY FOR PLAINTIFF.)**

W. L. KINSEY, being first duly sworn as a witness for and on behalf of the plaintiff, testified as follows:

Direct Examination.

(By MR. WOODY.)

My name is W. L. Kinsey. I reside at Sims, Montana, and have resided there about five years. I was acquainted with W. A. Mahaffey. I first



became acquainted with him in the spring of 1904 I think it was. I remember the occasion of Mahaffey making a homestead entry on lands in the neighborhood where I reside. I was not acquainted with him at the time he made the entry, but had met him several years before that near Cascade. I know the land described as the southeast quarter of the northwest quarter of section 10 and the south half of the northeast quarter of section 11, township north of range 3 west. That is the land on which Mahaffey made his homestead entry and known as the Mahaffey homestead. I first knew that land early in the spring of 1904. From March or April, 1904, up to the middle of June, 1904, I should say I saw the land several times. I used to ride through there for stock. I first saw the land in March or April, 1904, I was on the land, I rode over the land. During the balance of the year after June 15, 1904, and for two or three years after that I had occasion to be on the land frequently and pass by it frequently. I know where the house was built on the land. It was a log cabin. I saw the cabin on there, I think the cabin was on the place in the spring of 1904, but the roof was put on later. The cabin was on the land when I first went on the land in 1904. At that time it was an old cabin with a hole cut in it for a door and a window without any window in it and a floor without any floor, and it was what we call banked up. It was constructed out of logs with cracks in it. It had a dirt floor, and was not

chinked between the logs. There was a hole cut for a door and for a window but no floor in it. There was no stove pipe in the roof. The roof was just a board roof and was not battened or anything. It was not habitable or fit for a person to live in because there was no door and no window in it and cracks were on the sides so that you could put your finger through the logs. I first saw the cabin in 1904. I was not inside, just up to it on the outside. At that time there was no evidence that any one lived in the cabin at all. At that time no portion of the land had been cultivated, and no fencing on the land. Between April, 1904, and the middle of June, 1904, no fencing was done on the place and no cultivation of the land. From April, 1904, up to the middle of June, 1904, I saw this place every few days. My stock ran right across the range right in there, and my ranch is right near it you know. During that time I could cross back and forth over the land while I was driving stock. My stock ranged across it at that time. During the spring of 1904 Mahaffey was working for Cooper, in April I should say that early. How long prior to 1904 he had worked for Cooper I only know just by what I have heard. I mean Mr. Frank D. Cooper. I know Nelson Cooper. He is a son of Frank D. Cooper. Mr. Frank D. Cooper's place is about four miles east or southeast from the Mahaffey place.

## Cross-Examination.

(By MR. WALSH.)

I said that Mahaffey worked for Cooper. I don't know how long, but I saw him there early in the spring working for Cooper. He worked probably three or four months, maybe longer, I couldn't say. It was early in April when I first saw him there. I first knew this land in 1904. That was the first time I heard it belonged to Mahaffey. I live right near the land and my stock ranged all over the country there. I have lived in that neighborhood since 1904. I rode over the land frequently. There was a fence east of the land on what is known as the Cooper ground, by the ranch, that is all. There was no public highway near the land. The land is partly rough and partly smooth laying land. It does not exactly lie in a canyon. There is some of it nice level land and some lays on the hillside. I was near the house quite a number of times. I said there was a single board roof on it. It was on all summer. I think the roof was on when I first saw it. There was no chinking between the logs. I saw no other buildings on the land except some lambing dens Cooper had on the land. I know they belonged to Cooper because Cooper's men were working there, and the foreman was working with the men right there, that is how I came to it. There might be a small reservoir there but I couldn't say. There is a ditch taken out there not over forty rods long on the Mahaffey land. There is alfalfa on the Frank

Cooper land there and the ditches were put on there. A small part of the Mahaffey land could be irrigated from the ditches. I believe there was a dam down in the creek, but I am not positive, but I know a ditch comes out. I have had occasion to be active against Mr. Cooper because they ranged me out. I don't know as I am the complaining witness in this case any more than the rest of them. I am not sure whether it was me or a man by the name of Jones who gave the information to Mr. Foley to commence this case. Mr. Cooper and I were never anything but friendly. I have no cause to want to get even with him. I was inside of the shack and looked to see if there was a stove pipe in the roof.

Re-Direct Examination.

(By MR. WOODY.)

From the time I first became acquainted with the land up to the middle of June, 1904, I never did see Mahaffey on the land.

(By MR. WALSH.)

At the present time I live about five and a half miles from this land. At that time I lived across country about a mile and a half. In June, 1904, I gathered berries right on that land.

**(TESTIMONY OF JOHN GARDISPEE FOR PLAINTIFF.)**

JOHN GARDISPEE, being first duly sworn as a witness for and on behalf of the plaintiff, testified as follows:

My name is John Gardispee. I live on Simms Creek. I do not know William A. Mahaffey, I

have seen him once. I know the land called the Mahaffey homestead. I saw it in 1902-3-4. I did not know Mahaffey at that time only I had seen him. He was cooking over at Frank Cooper's lambing pens. In 1902 I passed by this land. When I first saw the place in 1902 there was a cabin there. That was the only cabin I ever saw on the place except the lambing pens. It was a small log cabin ten by twelve and there was a board roof on it. That was the first time I saw it. It had a dirt floor and no door or windows. There were holes out for a door and windows but no door or windows in it. It was in May, 1902, when I first saw the land. From May, 1902, up to the middle of June, 1904, I was through there quite often hunting coyotes, and one thing and another, and I used to go over there helping them around doing some work. I rode over the land and past the cabin two or three times a year. The first time I saw the cabin in 1902 I did not notice chinking in it, you could see daylight through it. From May, 1902, the first time I saw the cabin, up to the middle of June, 1904, the cabin was not changed and excepting the roof was taken off of it. I never did see Mahaffey on the place. I never did see him but once and that was when he was cooking for Cooper. I never did see anybody living in the cabin. Between May, 1902, and the middle of June, 1904, I did not see any evidence around the cabin of any one living there. In May, 1902, there was none of the land cultivated, and I never saw



any fence only on one side of the land. The land was not fenced at all, there was a road through it. Up to the middle of June the land was never fenced. It remained in the same condition all that time. From May, 1902, up to the middle of June, 1904, none of the land was ever cultivated. No plowing was done on the land. There were no other buildings on the land. If there had been any other buildings there I would have seen them.

Cross-Examination.

(By MR. WALSH.)

I live about three miles northeast from the land. This land does not lie on any public road. There is a road going through there to go to town, to go to Sun River, where I used to trade. I used to pass through there going to Sun River in 1902, 1903 and 1904, oh, for a good many years. I used to trade at Cascade and I used to trade at Sun River too. I never saw Mahaffey but once. I am sure that it was in 1902 that I saw Mahaffey working for Cooper. That was at Bird Tail Creek, about three miles from the Mahaffey place. I first saw the cabin in 1902. I saw it in 1902, 1903 and 1904. It was afterwards torn down and moved to the Crown Butte Ranch. There was a roof on it when I first saw it. I was at the door but I never went inside because I could see inside. I did not see any other improvements on the land except the lambing pens. There was a reservoir east of the house which was built after I went there, I think in 1904 or 1905. There was a fence on the east



side of the land. The house was afterwards torn down, I think in 1904 or 1905. I cannot say exactly, I don't remember the exact date when it was torn down. The roof was taken off a while before the house was torn down. I passed by the place hunting coyotes for Frank Cooper. They told me there was a lot of coyotes around that place and I used to ride by there when I was hunting. I was not working for Cooper but was hunting coyotes for the bounty.

**(TESTIMONY OF JOHN GARDISPEE JR. FOR  
PLAINTIFF).**

JOHN GARDISPEE, JR., being first duly sworn as a witness for and on behalf of the plaintiff, testified as follows:

My name is John Gardispee Jr. I am a son of the John Gardispee who has just testified. I live near Simms, Montana. I have lived there for the last twelve years. I knew William A. Mahaffey and first met him in 1902. I know the land called the Mahaffey homestead. I first saw that land in 1902, along about April. For the next three or four years my home was about two or three miles from the Mahaffey land. After April, 1902, during the next two or three years I was through that land several times, pretty often. I was across the land. I would be hunting cattle and horses and the cattle and horses ran in there quite a bit. For the next two or three years after 1902 I knew of only one fence the north and south line fence on the east side. There was no fence enclosing it so

as to keep stock out. It was open so that stock would range all over it. When I first saw the land in 1902 there was a cabin on it. It was an old log cabin ten by twelve feet or something like that. There was a board roof on it and I do not think it was chinked. There were holes for doors and windows but no doors and windows that I know of in it. It had a dirt floor. In 1902 when I first saw the cabin it was not fit for any one to live in. When I first saw the land in 1902 no one was living in the cabin or on the land. From 1902 up to the middle of 1904 no doors or windows were put in the cabin.

Q. Now, from 1902 up to June, 1904, was there ever anything else done to the cabin, was it chinked up or any roof or floor put on it? A. I never paid no attention to it.

Between April, 1902, and the middle of June, 1904, I never saw any one living in the cabin or on the land. I never did see Mahaffey on the place. I went over this place pretty regular, probably once a month. During the time from April, 1902, up to the middle of June, 1904, the place was never fenced so that I couldn't ride back and forth across it. During all of that time it remained open. None of the land was ever cultivated or plowed that I know of. From the month of April, 1902, up to the middle of June, 1904, no other building was ever built on the Mahaffey land. I never paid no attention to where he was. Mahaffey was a cook and I have seen him at Cooper's cooking several times, that is I heard him talk about it.

## Cross-Examination.

(By MR. WALSH.)

I am thirty-two years old. I lived two or three miles from this land. I had no particular acquaintance with Mahaffey. I knew nothing about his business or for whom he worked, if anybody, only what I have been told. I never saw him in the employ of any person. I lived where I now live since 1902. Before that I lived about eight miles from the Mahaffey land. I saw the cabin on the Mahaffey land when I first went there. I stopped and looked at it. I went into it. The cabin was not quite half a mile from the east line of the land I think. I know where the east line is because there is only the one line between it and the Crown Butte ranch. I know where both corners of the section are. The house was in a coulee, and a stream running past there. I did not see any improvements there only a little piece of a ditch. There was a reservoir there, down a coulee below, east of the house. That ditch would cover a little of the land. When I first saw the house there was a single board roof on it. I never saw Mahaffey there. I was there pretty often during those years.

(TESTIMONY OF W. E. BENNETT FOR THE  
PLAINTIFF).

W. E. BENNETT, being first duly sworn, as a witness for and on behalf of the plaintiff, testified as follows:

## Direct Examination.

(By MR. WOODY.)

My name is William E. Bennett. I was at one time a Special Agent in the employ of the General Land Office. I was during the year 1909. In 1909 I made an examination of the lands embraced in the homestead entry of William A. Mahaffey, the land being situated in sections 10 and 11, township 19 north of range 3 west. The log cabin on the place was 10 by 14 at the time I made my examination of it. It was unchinked and left considerable space between the logs. There was no floor in the cabin, and no windows and no door, although the holes had been cut in the logs for both the window and door. The cabin was roofed with only a single board roof I believe. All the entry at that time was under enclosure, not fenced by itself, but it was,—the fence was where it just touched the place, if it touched it at all. I am not able to say whether it did or not, but the place itself was not fenced. The fence stood on some adjoining land, if I remember it correctly. There was no floor on the cabin. The roof was a single board roof, the cabin was not chinked and holes were cut for a door and window, but no doors or window put in. There was no frame even in the space for the door. I examined the door and window opening for the purpose of ascertaining whether there had ever been a door or window put in. I could see that there was no evidence that any door or window frame had ever been put in. I did not find any other

buildings on the land at this time. The land was enclosed in with land known as Mr. Cooper's field. The land was in an enclosure and there was no public road through there, although there was a trail there which was followed to go through that section of the country. *though*

Cross-Examination.

(By MR. WALSH.)

I never saw the land prior to 1909. I was there about the 5th or 6th of July, 1909 (Pointing to the witness W. L. Kinsey) Mr. W. L. Kinsey accompanied me. That was the Mr. W. L. Kinsey who accompanied me. I stopped at his place while I was there making the examination. I hired a team at Cascade, but used Mr. Kinsey's team either for making this examination or another later in the summer. He went to the land and pointed it out to me. There was no road through this land, just a trail. You could go into Mr. Kinsey's place through this field or go out from there coming out to Cascade. I am not sure whether it was the corner stone at the southwest corner of Section 11 we saw, but that is my recollection at this time. I know that we saw some corner stone and identified it sufficiently for me to be positive that it was the land. I think the cabin was in a canyon or gulch, at least it was not on the top of the claim. Mr. Kinsey showed me the cabin. I said the cabin was 10x12. I must have measured it because that was my report of the matter. It had a board roof and no floor. To the best of my recollection it did not



have cross piece to support a floor, but I would not swear positively to that. It was not chinked and no door or window. It is possible of course that they may have been there in the past. We went over the land a day. If I did see a reservoir there it didn't amount to enough to impress itself on my recollection. The stream they speak about was entirely dry that year and I would have noticed a reservoir, I believe. If there had been a reservoir below the house and going up to the house I would have seen it. There was a ditch there. As to how the fence was with reference to the lines I am unable to say at this time. I knew at that time positively because I ran out those fences part of them, but at this time I am unable to say. I said the land was in Cooper's enclosure. I know that. There wasn't any question about this being Cooper's enclosure. No one told me that, I knew it. Mr. Kinsey did not tell me.

**(TESTIMONY OF FRANK KINSEY FOR THE PLAINTIFF).**

FRANK KINSEY, being first duly sworn as a witness for and on behalf of the plaintiff, testified as follows.

Direct Examination.

(By MR. WOODY.)

My name is Frank Kinsey. I live at Simms just at present. That is in the neighborhood of St. Peter. I have lived eleven years in that vicinity. I know William A. Mahaffey who made a homestead entry on land in that vicinity. I first became acquainted with him in 1904. I know the land



he entered as a homestead. I did not become very much acquainted with that land until the spring of 1904. I had been over the land before that. I know where the cabin was on the Mahaffey homestead. I first saw that cabin in 1904, that was the first time I ever paid particular attention to it. That was about the fore part of April, 1904. I had been over the land about a year before that. When I saw it in 1904 I noticed the shape it was in. It was built of logs, logs that were two or three inches through, or something like that. It had no roof on it and no windows or nothing of that sort. There never had been any in it. It was not chinked between the logs. The space between the logs I would say were between three and four inches. It did not have any floor in it. There were places cut out for a door and window but no door or window were put in. I could tell from my examination that there had never been any door or window casing in it. From the first time I saw the cabin until the time Mahaffey made final proof I was on the claim several times. There was a board roof placed on the cabin after that. At the time final proof was made the cabin could not have been inhabited at all. It was not in such a condition that it could have been used for living purposes. Before final proof was made I never saw any other improvements on the place. No other buildings, fencing or corrals of any kind. I was back and forth across there while driving and hunting stock, it was open range. It was open so that stock of all

kinds ranged back and forth across the land. I know that Mahaffey was working for Mr. Cooper in the spring of 1904, helping lamb I think. Where he was working was about a half or three-quarters of a mile east of the Mahaffey homestead. I saw Mahaffey up there once or twice during the spring of 1904. I never did see Mahaffey on his land at any time prior to the time he made final proof.

Cross-Examination.

(By MR. WALSH.)

I live about two and one-half miles from this land. I first went there in 1904. Before that I lived up near Cascade, twelve or fifteen miles from the Mahaffey land. I first met Mahaffey in 1904 at this Cooper place, about half or three-quarters of a mile from the Mahaffey land. I saw him there once or twice but do not know how long he was there. I was first on the Mahaffey land the first part of April, 1904. I saw the house at that time. There was no roof on it, and no door or window. There were no fences. I did not see a reservoir or ditch there. There was a fence east of there but that fenced in the Crown Butte place where Mahaffey was working. I have been all over the land frequently. I had been over the claim before that but 1904 was the first time I paid any particular attention to the claim or to the house.

(MR. WOODY.)

I desire to offer in evidence certified copies of the record pertaining to the Mahaffey homestead entry. Included in this certified record are some

affidavits and reports made subsequent to the patent. I don't care to have them considered because I don't think they are proper; but I simply want the record beginning with the homestead application including the issuance of final receipt.

BY THE COURT: Very well.

“B”

MEL.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

Washington, D. C., September 29, 1909.

I hereby certify that the annexed copies are true and literal exemplifications of the originals on file and of record in this office.

IN WITNESS WHEREOF I have hereunto subscribed my name and caused the seal of this office to be affixed at the City of Washington, on the day and year above written.

JOHN O'CONNELL,

Acting Recorder of the General Land Office.

(Seal)

8-174

4-007

1-27

HOMESTEAD.

Application )

No. 10048 )

Land Office at Helena, Mont.,

April 25th, 1899.

I, William Mahaffey, of Cascade, Mont., do hereby apply to enter, under Section 2289 Revised Statutes of the United States, the S $\frac{1}{2}$  NW $\frac{1}{4}$ , Sec. 11; SE $\frac{1}{4}$  NE $\frac{1}{4}$  & NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 10 in

township 19 N. of Range 3 W containing 160 acres.

WILLIAM MAHAFFEY

Land Office at Helena, Mont.,

April 27th, 1899,

I, George D. Green, Register of the Land Office do hereby certify that the above application is for Surveyed Lands of the class which the applicant is legally entitled to enter under Section 2289, Revised Statutes of the United States, and that there is no prior adverse right to the same.

GEORGE D. GREENE,

Register.

(Endorsed: 1-27 1-2. 4-007. No. 100048. Homestead Application. William Mahaffey, Cascade, Mont., April 25th, 1899. Sec. 10 & 11 Town. 19 N. Range 3 W. 14. Received U. S. Land Office Helena, Mont., April 27, 1899. Geo. D. Greene, Reg. 14-100.)

4-063.

1-25

### HOMESTEAD AFFIDAVIT .

U. S. Land Office, Helena, Mont.,

April 25th, 1899.

I, William Mahaffey of Cascade, Mont., having filed my application No. 10048, for an entry under Section 2289 Revised Statutes of the United States, do solemnly swear that I am not the proprietor of more than one hundred and sixty acres of land in any State or Territory; that I am over twenty-one years of age and a native born citizen of the United States, that my said application is honestly

and in good faith made for the purpose of actual settlement and cultivation and not for the benefit of any other person, persons, or corporation, and that I will faithfully and honestly endeavor to comply with all the requirements of law as to residence, settlement and cultivation necessary to acquire title to the land so applied for; that I am not acting as agent of any person, corporation or syndicate in making such entry, nor in collusion with any person, corporation or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that I do not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for myself, and that I have not directly or indirectly made, and will not make any agreement or contract in any way or manner, with any person, or persons, corporation, or syndicate whatsoever, by which the title I might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except myself, and further that since August 30, 1890, I have not entered under the land laws of the United States, or filed upon a quantity of land, agricultural in character, and not mineral, which, with the tracts now applied for, would make more than three hundred and twenty acres, and that I have not heretofore made any entry under the homestead laws, and am unable to appear at the district land office to make this affidavit on account of distance being 100 miles.

WILLIAM MAHAFFEY.

State of Montana,  
Cascade County.—ss.

Sworn to and subscribed before me this 25th day of April, 1899, at my office at Great Falls, in Cascade County, Montana.

W. W. COCKRILL,  
United States Commissioner, District  
of Montana.

4-137	1-27	24
Receiver's Receipt No. 10048. Application No. 1048		
HOMESTEAD.		
Receiver's Office, Helena, Montana.		

April 27th, 1899.

Received of William Mahaffey the sum of sixteen dollars—no cents; being the amount of fee and compensation of Register and Receiver for the entry of South half Northeast quarter Sec. 11; Southeast quarter Northeast quarter and Northeast quarter of Section 10, in Township 19 North of Range 3 W., MM, under Section 2290, Revised Statutes of the United States.

JOHN HORSKY,  
Receiver.

\$16.00

NOTE.—It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of the filing the affidavit, being also the date of entry. An abandonment of the land for more than six month works a forfeiture



of the claim. Further within two years of the expiration of the said five years he must file proof of his actual settlement and cultivation, failing to do which his entry will be cancelled. If the settler does not wish to remain five years on his tract, he can, at any time after fourteen months, pay for it with cash or land warrants, upon making proof of settlement and of residence and cultivation from date of filing affidavit to the time of payment.

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4-369      1-19

**HOMESTEAD PROOF.—TESTIMONY OF WITNESS.**

CHARLES GILBERT, being called as witness in support of the Homestead entry of William Mahaffey, for S $\frac{1}{2}$  NW $\frac{1}{4}$  Sec. 11, NE $\frac{1}{4}$  SE $\frac{1}{4}$ , SE $\frac{1}{4}$  NE $\frac{1}{4}$  Section 10, T. 19 N. R. 3 West, testified as follows:

Question 1. What is your name, age and postoffice address?

Answer. Charles Gilbert, age 62 years, P. O. Cascade, Montana.

Question 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Answer. Yes, with both.

Question 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business.

Ans. No.

Ques. 4. State specifically the character of this

land—whether it is timber, prairie, grazing, farming, coal or mineral land?

Ans. Grazing land only.

Ques. 5. When did claimant settle upon the homestead and at what date did he establish actual residence thereon?

Ans. June, 1899, settled, built house and established residence.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried state the fact.)

Ans. Claimant is unmarried and had lived there since June, 1899.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement and for what purpose; and if temporarily absent did claimant's family reside upon and cultivate the land during such absence?

Ans. He has not been absent.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. None of the land is broken up, too rough, used for grazing entirely.

Ques. 9. What improvements are on the land and what is their value?

Ans. House, corral and all fenced, improvements are worth \$300.

Quest. Are there any indications of coal, salines,

or minerals of any kind on the homestead?  
(If so describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None.

Ques. 11. Has the claimant mortgaged, sold or contracted to sell any portion of said homestead?

Ans. No.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. No. Claimant has acted in good faith.

CHARLES GILBERT.

I hereby certify that the foregoing testimony was read to the witness before being subscribed, and was sworn to before me this June 15, 1904, day of June 15, 1904, at my office at Great Falls, Cascade County, Montana.

C. H. BENTON,  
Receiver.

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4-309

1-27

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**HOMESTEAD PROOF—TESTIMONY OF WITNESS.**

CHARLES WISE, being called as witness in support of Homestead entry of William Mahaffey for S $\frac{1}{2}$  NW $\frac{1}{4}$  Sec. 11, NE $\frac{1}{4}$  SE $\frac{1}{4}$  SE $\frac{1}{4}$  NE $\frac{1}{4}$  Sec. 10, T. 19 N. R. 3 West, testifies as follows:

Question 1. What is your name, age and post office address?

Answer. Charles Wise, age 29 years, P. O. Cas-

cade, Montana.

Ques. 2. Are you well acquainted with the claimant in this case, and the land embraced in his claim?

Ans. Yes with both.

Ques. 3. Is said tract within the limits of any incorporated town or selected site of a city or town or used in any way for trade or business?

Ans. No.

Ques. 4. State specifically the character of this land—whether it is timber, grazing, prairie, farming, coal or mineral land?

Ans. Grazing only.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. In June 1899, settled, built house and commenced residence.

Ques. 6. Has claimant and family resided continuously on homestead since first establishing residence thereon? (If settler is unmarried state the fact).

Ans. He is unmarried and has lived there since June, 1899.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. He has not been absent.

Ques. 8. How much of the homestead has the settler cultivated and for how many seasons did he raise crops thereon?

Ans. None, land is too rought to cultivate, is used for grazing only.

Ques. 9. What improvements are on the land and what is their value?

Ans. House, corral and all fenced, improvements are worth \$300.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes?

Ans. No.

Ques. 11. Has the Claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

Ans. Not that I know of think not.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. No. Claimant has acted in good faith.

his

CHARLES X WISE.

mark

R. E. WILLIAMS, Witness.

I hereby certify that the foregoing testimony was read to the witness before being subscribed, and was sworn to before me this June 15, 1904, day of June

15, 1904, at my office at Great Falls, Cascade County, Montana.

C. H. BENTON,  
Register.

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**HOMESTEAD PROOF—TESTIMONY OF CLAIMANT.**

WILLIAM MAHAFFEY, being called as a witness in his own behalf in support of Homestead entry No. 10048, for S $\frac{1}{2}$  NW $\frac{1}{4}$  Sec. 11, SE $\frac{1}{4}$  NE $\frac{1}{4}$ , NE $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 10 T. 19 N. R. 3 West.

Question 1. What is your name, age and post office address?

Answer. William Mahaffey, age 49 years, P. O. Cascade, Montana.

Ques. 2. Are you a native born citizen of the United States, and if so, in what state or territory\* were you born?

Ans. Born in Pennsylvania, U. S. A.

Ques. 3. Are you the identical person who made homestead entry No. 10048 at the Helena land office on the 27th day of April, 1899, and what is the true description of the land now claimed by you?

Ans. I am and claim the S $\frac{1}{2}$  NW $\frac{1}{4}$  Sec. 11, SE $\frac{1}{4}$  NE $\frac{1}{4}$  NE $\frac{1}{4}$  SE $\frac{1}{4}$ , Sec. 10, T. 19 N. R. 3 W.

Ques. When was your house built on the land and when did your establish actual residence thereon? (Describe the house and other improvements which you have placed on the land, giving total value thereof?)

Ans. Built in June, 1899, settled and established



residence at that time. House 16x18 feet, all fenced, corral, worth \$300.

Ques. 5. Of whom does your family consist; and have you and your family resided continuously on the land since first establishing residence thereon? (If unmarried state the fact.)

Ans. I am unmarried, have lived on the land since establishing residence.

Ques. 6. For what period or periods have you been absent from the homestead since making settlement, and for what purpose; and if temporarily absent, did your family reside on and cultivate the land during such absence?

Ans. Have not been absent.

Ques. 7. How much of the land have you cultivated each season and for how many seasons have you raised crops thereon?

Ans. Have not cultivated any of the land, it is too rough and has been used for grazing entirely.

Ques. 8. Is your present claim within the limits of an incorporated town or selected site for a city or town, or used in any way for trade or business?

Ans. No.

Ques. 9. What is the character of the land? Is it timber, mountainous, prairie, grazing, or ordinary agricultural land? State its kind and quality and for what purpose it is most valuable?

Ans. Grazing land only and used for that purpose.

Ques. 10. Are there any indications of coal salines, or mineral of any kind. (If so describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes?)

Ans. No.

Ques. 11. Have you ever made any other homestead entry? (If so describe the same.)

Ans. No.

Ques. 12. Have you sold, conveyed or mortgaged any portion of the land; and if so, to whom and for what purpose?

Ans. No.

Ques. 13. Have you any personal property of any kind elsewhere than on this claim. (If so describe the same and state where the same is kept.)

Ans. No.

Ques. 14. Describe by legal subdivisions or by number, kind of entry, and office where made, any other entry or filing (not mineral), made by you since August 30, 1890.

Ans. None made.

WILLIAM MAHAFFEY.

I hereby certify that the foregoing was read to the claimant before being subscribed, and was sworn to before me this June 15, 1904, day of June 15, 1904, at my office at Great Falls, Mont., Cascade County, Montana.

C. H. BENTON, Register.

**FINAL AFFIDAVIT REQUIRED OF HOMESTEAD  
CLAIMANTS.**

Section..... of the Revised Statutes of the  
United States.

I. William Mahaffey, having made a homestead entry of the S $\frac{1}{2}$  NW $\frac{1}{4}$  Sec. 11 NE $\frac{1}{4}$  SE $\frac{1}{4}$ , SE $\frac{1}{4}$  NE $\frac{1}{4}$  Sec. No. 10, in Township No. 19 N., Range No. 3 West, subject to entry at Helena, Montana, under Section No. 2289 of the Revised Statutes of the United States, do now apply to perfect my claim thereto, by virtue of Section No..... of the Revised Statutes of the United States; and for that purpose do solemnly swear that I am a native born citizen of the United States; that I have made actual settlement upon and cultivated and resided upon said land since the 1st day of June, 1899, to the present time; that no part of said land has been alienated, except as provided in Section 2288, of the Revised Statutes, but that I am the sole bona fide owner as an actual settler; that I will bear true allegiance to the Government of the United States; and further that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States.

**WILLIAM MAHAFFEY.**

I, C. H. Benton, Register of Land Office do hereby certify that the above affidavit was subscribed and sworn to before me this June 15, 1904, day of June 15, 1904, at my office at Great Falls, Mont., in Cascade County, Montana.

**C. H. BENTON,**

Register.

(Endorsed: Homestead proof. Land Office at Great Falls, Montana. Original application No. 10048, Final Receipt No. 691. Approved, J. M. Burlingame, Register, C. H. Benton, Receiver.

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4-140.      1-23.

Final Receivers Receipt No. 691. Application No. 10048.

**HOMESTEAD.**

Receiver's Office, Great Falls, Montana.

June 23, 1904.

Received of William Mahaffey the sum of six dollars no cents, being the balance of payment required for the entry of S $\frac{1}{2}$  NW $\frac{1}{4}$  Sec. 11; NE $\frac{1}{4}$  SE $\frac{1}{4}$ , SE $\frac{1}{4}$  NE $\frac{1}{4}$  Sec. 10 in Township 19 north of Range 3 West M.MM. containing 160 acres, under Section 2291 of the Revised Statutes of the United States.

C. H. BENTON,

\$6.00

Receiver.

\$1.00 Testimony fee received. Number of written words 444, Rate per 100 words 22 $\frac{1}{2}$  cents.

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4-196      1-28

**HOMESTEAD.**

Land Office at Great Falls, Montana.

June 23, 1904.

Final Certificate )	(Application xxx
No. 691            )	( No. 10048 xxx

It is hereby certified That, pursuant to the provisions of Section 2291 Revised Statutes of the

United States, William Mahaffey has made payment in full for S $\frac{1}{2}$  NW $\frac{1}{4}$  Sec. 11, NE $\frac{1}{4}$  SE $\frac{1}{4}$ , SE $\frac{1}{4}$  NE $\frac{1}{4}$  Sec. 10, in Township No. 19 N., of Range No. 3 W. of the Montana Principal Meridian, Montana, containing 160 acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the said William Mahaffey shall be entitled to a patent for the tract of land above described.

J. M. BURLINGAME,

Register.

Endorsed) Final Certificate No. 691, Homestead Application No. 10048. Land Office at Great Falls, Montana. June 23, 1904. Sec. 10-11. Town. 19 N. Range 3 W. Approved Nov. 12, 1904. R. B. S. Clerk. Division C. Patented Dec. 31, 1904. Recorded Vol. 63, page 49, 14-100?

The foregoing certified record, after being introduced in evidence being marked "Plff's Exhibit 1."

Thereupon Plaintiff rested.

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**(INTERVENOR'S CASE)**

**(TESTIMONY OF FRANK D. COOPER FOR  
INTERVENOR).**

FRANK D. COOPER, being first duly sworn as a witness for and on behalf of the intervenor, testified as follows:

Direct Examination.

(By MR. WALSH.)

My name is Frank D. Cooper. During the last

three or four years, in the summer time, I have been around Great Falls and Glasgow. My family has been down in San Diego and I have been down there two or three months in the winter time. I claim my home is here. It used to be at St. Peter's Mission, that is where I used to vote, but I haven't voted since I left here. I lived at St. Peter's Mission since 1876. I have lived in Montana since 1872. I have been engaged in the stock business. I was a member of the legislature, and was also a county commissioner for Cascade County. I knew a man named William Mahaffey. I first knew him in either 1900 or 1901, I think 1900. I got acquainted with him after he took up that land, that is the first recollection I have of him, altho I might have met him the summer before, but I didn't recognize him until I saw him on that place of his. I know where the land in controversy is located. I think at that time I lived on my home place on Mission Creek about seven miles, the way the road runs from his place. They call it seven miles but I think it is about nine miles. There was a road between Mahaffey's land and Cascade. I have seen Mahaffey passing to and fro past my place <sup>between</sup> ~~and~~ his place and Cascade, about the same as a ranchman usually goes to town. I never had any conversation with him prior to the time he located on this land or prior to the time he made final proof. I was past that land I think in the spring of 1900. I saw Mahaffey there at that time. At that time I saw a house or cabin on the claim. My recollec-



tion is that it was not a very large cabin, a log cabin that he built himself. The furniture in it was about such furniture that a bachelor would have, iron bedstead and a small stove and such things as that. I was in there horseback and he was a new settler there, and I just stopped and talked to him for a few minutes. There was a board roof on the cabin. It had a floor in it. I went into the cabin to light my pipe. There was a corral there and three or four horses. The corral didn't amount to much just big enough to hold two or three horses. Soon after that he told me he was going to fence it, and wanted to know if he could join me on the end there, that is the east end of it, that would be eighty rods, and I finally sold him forty rods of fence, that would be about half of it. He paid me thirty-five dollars for it. It was in a kind of a little canyon and he wanted to fence the land on both sides to keep his horses in. There was a reservoir a few hundred yards above the east fence on the creek. It was a good reservoir about a hundred feet and a ditch coming out of it. It is right close there and any one passing up and down could not pass without seeing it and seeing the condition it was in. We herded sheep on that land before he took it up, after he took it up we recognized it the same as other ranches and never herded on it. I never had any lambing pens on that land. Mahaffey never worked for me directly. He may have helped some of my men running the sheep in the spring of the year. Those men I don't have

any knowledge of them and don't know when they come and when they go. I have a large number of men but don't know how many I had that spring. I have foremen with these outfits with these sheep. The foremen hire men without my knowing anything about it, and particularly at lambing time. I don't pay any attention to the men, only the head men that we have. I guess the first conversation I had with Mahaffey about purchasing this land was the 15th of June, 1904, the conversation was at Cascade some place. That is in this state. He struck me rather suddenly and he didn't want to sell it to me, he asked me where Nelson was. Nelson was my son. Nelson was not there and I probably told him where he was. Mahaffey said he wanted to leave there and wanted to sell out to him. I studied a little while and asked him what he wanted for it. That is as near as I can recollect. I cannot recall the exact conversation but that was the force. He wanted three hundred and fifty dollars, and at that time I was holding some of Nelson's money and it might have been left there by H. H. Nelson. I asked him what he wanted and he said three hundred and fifty dollars and he said he wanted to sell out to Nelson. I studied a little bit, and I finally—I had Nelson's money, I invested it for him, and I finally made out a check for him for three hundred dollars, and he went down to Bunnel's, the justice of the peace there, and made out a deed, and brought it back and I gave him three hundred dollars for it. Previous to and at

or about that time I had bought other lands of like character in that vicinity, I bought land of that kind from time to time. I bought Northern Pacific land. I think it was a little bit after they got an additional ten miles there, and the Northern Pacific came out there. Prior to that time I had bought some. I paid a dollar and a quarter an acre for the land I bought from the Northern Pacific. This Northern Pacific land was of the same character as the Mahaffey land. This railroad land was all around it. They are every odd section, and what the railroad company had there, the every odd section of land would be the average of what was left there. The Mahaffey land was in a little canyon, and was rocky on both sides. He just wanted to have a place to live, he was not particular about the soil. That land would not average as good as the railroad land. This Mahaffey land was not worth over three hundred dollars when I bought it and I don't think it is worth much over that now in that country up there. The rest of the land in Section 11, adjoining the Mahaffey land was railroad land and I bought it. I paid a dollar and a quarter an acre for that railroad land. Four hundred and eighty acres of that section I bought from the railroad company after the Mahaffey land was bought. I paid Mahaffey for the land with a check. At the time I bought the land from Mahaffey I had very little knowledge of it, more than what I had known. I noticed the house there at that time, and the improvements and the condi-

tions there, and passing on the road I would notice him continuously until he proved up, noticed him as I passed along the country there. At the time I bought this land I did not have any knowledge that Mahaffey had not entered the land in good faith and complied with the law by living upon it and placing improvements on it. I had very little knowledge of it more than what I had known before. I noticed the house there at that time and the improvements and conditions there, and passing on the road I would notice him there until he proved up. I don't know how often I would pass there but as often as a rancher usually goes to town. I saw him going to town. I asked him what shape it was in, and he made the remark, if I remember correctly—. If I remember correctly he lived there continuously. He didn't owe me anything and I thought it perfectly right if I was buying for Nelson. I was a little particular about it to and I considered it. At that time I did not have any knowledge that the Government claimed that he had not complied with the law as to residence and improvements, or that he had not entered the land in good faith and in everything complied with the law. I bought the land in good faith. Mahaffey told me he had made proof on it. Nelson got the money in this way. He was named after H. H. Nelson, and H. H. Nelson gave him one hundred dollars for naming him, and I was to look after the money until he was twenty-one years old. H. H. Nelson gave me the money when Nelson was

about two weeks old. H. H. Nelson and myself had lived neighbors together and we were always particularly friendly. After I got this money for Nelson, I think I bought calves with it and sold them. Some times the money was not used at all. Nelson is twenty-three now, he was about eleven when I bought the land. These calves, I think there was fifteen of them, I went across the river and bought. I kept them there a while. I did not like to keep them separate and then sold them. About the time I bought the land I think Nelson had to his credit \$300, or a little more.

Cross-Examination.

(By MR. WOODY.)

I knew Mahaffey personally in 1900. In 1900 I was down at his place. After I purchased the land for my son I was not down on the place for a long time, I dont know how long, but two or three years, it was a country that I didn't go into very much. When I did finally go down I found a cabin there. It was the same cabin that was there when I visited the place in 1900. When I was there in 1900 it was a log cabin with a roof on it and doors and windows in it. Mahaffey was living in it at that time. It had a rough board floor as I remember. I think that was along in the spring of the year. I didn't go around to see how much he had fenced. I did not go around the place,—the sides that is left—that fence that is left, that he bought it, but then I went through that, and then on the ridges I didn't go around to see what he had made



in the way of fences in addition to those what he had told me about, I didn't know anything about that in particular, nothing further than I could see. From 1900 up to the time I purchased I had not any knowledge of ever being around that corral. I owned the land adjoining Mahaffey's on the east. I had sheep there. The sheep camp was about a mile from the Mahaffey cabin. The sheep camp was about a quarter of a mile from the line of the Mahaffey land. During the years 1900-1901-1902 and up to and including 1904, Mahaffey was not in my employ. If Mahaffey was in my employ in 1900 he was under one of those in charge of one of the bands of sheep, he wasn't directly in my employ. On my land adjoining the Mahaffey we would run sheep there in the winter and would lamb there in the spring of the year. From 1900 to 1904 we used it every winter and I know we lambed there, but I am not positive whether every spring or not. I am not positive that we used it in the spring of 1904. It is pretty hard to tell whether I had occasion to visit the sheep camp that year or not. I don't know whether I did <sup>or</sup>~~not~~ not. I have sheep I think on Birch Creek, down in Valley County. I don't know whether I was down there in the lambing season or not. I had sheep camps at different places around the country, and had a foreman in charge of these different camps. Some years I went around and visited the camps, and some years I did not. I had other business to attend to and was not around those camps a great



deal. I had other business to attend to. My home place by the road was a little more than seven miles from the Mahaffey place. I had purchased lands in that vicinity and some under contract from the Northern Pacific Railway Company. From time to time when I was there I had purchased some homesteader's lands on which they had made their final proofs. During the time I was there I acquired about nineteen thousand acres. A large amount was purchased from homestead entrymen after they made entries and a great deal from the Northern Pacific Railroad. Mahaffey wanted my son Nelson to purchase the land, he never did want me to purchase it. The purchase was actually made and the deed executed on the 15th of June, 1904. I think that was on the same day that he made his final proof. At that time Mahaffey asked me to purchase it for Nelson. I don't know whether or not Mahaffey knew that Nelson had any money. He seemed to want him to have it. I think he knew he was named after Nelson and knew the circumstances. Prior to that time I had not purchased any other lands for my son Nelson. I don't remember the conversation particularly, but he wanted Nelson to have the land. I don't remember whether he knew that Nelson had money to purchase the land and that I had it. I don't remember the details of it but I know he did not want to sell it to me, he wanted to sell it to him and determined on it. I told him all right he could let him have it. It has been a good while

ago. I said that I was on the Mahaffey place in 1900. I may have been over the land before that but not any ways soon. I knew the land all around there in a general way. I think between 1900 and the time I bought the land I was there, but I am not positive, but I don't remember seeing him. I might have been there once afterward I am not sure about it. From the time Mahaffey made his settlement on the land up to the middle of June, 1904 I am not sure that I was on the land more than once. I knew all the land over in that country. I had lived there a good many years. I knew the general character of the land, I knew it in a general way. I never went to examine any of the lands I bought. I knew all the land all over that country. I had lived there a good many years. I knew the general character of that land and knew it in a general way. I never went to look at any land that I bought. One hundred and sixty acres. I knew the general character of the land and I never went to look over the lands and examine them completely at all. I never went to see any. I never saw a piece of land; never saw the railroad land, never examined any land of all the land I bought, but I knew the general character of all of that land. I knew the general character of the land, and I never went over the lands and examined them completely at all, I never went to see any, I never saw a piece of land, never saw the railroad land, never examined any land of all the land I bought. But I knew the general character of

all that land. I knew that 160 acres of land in that vicinity was worth \$300, the same as the railroad land. I considered all the land around there as worth about a dollar and a quarter an acre. When Mahaffey approached me it was in Cascade. I knew that he had made his final proof. I think at that time he had with him and showed me his final receipt. I probably asked him if he had his final receipt and he must have showed it to me because if he had not it I would not have bought it. I don't know whether he had a final receipt with him that day or not. Afterwards I got the patent from the land office, I got it some time. Whether I got the final receipt that day or not I don't remember, I got the final receipt some time or other. I did get the final receipt but whether that day or later on I don't remember. This money that I used to purchase the land with came from H. H. Nelson. He was not any relation to me or to my son. I got \$100. from H. H. Nelson for my son Nelson. When I purchased the land I paid over the original principal and the interest that had accrued on it so that it amounted to \$300. When I made the purchase I was acting as the agent of my son, I was acting for him. After the land was purchased and the deed executed and delivered nothing was done with it. Oh, yes, I suppose it was used in common with the other land. After it was purchased I suppose it was used in common with other lands, used it practically the same as the other lands. When it was purchased

it was not enclosed. I don't know as I built the fence after I got it, I don't remember whether I did or not, that I don't remember. I believe that I left it practically the same as it was. After the land was purchased I was on it at different times, but not until a long time after. Well, no, it wasn't enclosed with other lands of mine. I don't know as I built the fences after I got it. I don't know whether I did or not. That I don't remember. I believe I left it practically the same way it was, except what it would depreciate and what would be stolen and taken off. There is none of these places unless you have a man on them that would remain the same. They would soon carry it off. There was not a place but what I had some trouble with it. Everything was practically taken off except the house. What was lost was probably taken away. I don't know what did become of it. I didn't go out to look over the land until a long time after I purchased it. I didn't go out then to look it over in particular at all. I don't know whether at that time it was fenced separately or fenced with other lands. I don't know anything about grazing. I wasn't around there to know whether it was used or not.

Re-Direct Examination.

(By MR. WALSH.)

We lived on the road and Mahaffey drove past a good deal, and he used to take my son Nelson over to town a good deal and buy candy for him, and they were fishing together several times. I

don't know whether that was more than one summer or not. He liked Nelson and that is how they became acquainted some where along that line. When he would go over and get his mail they would go out fishing for a while and would come home in the evening.

#### Re-Cross-Examination.

I think Nelson was about 11 years old at that time, or in that neighborhood.

Thereupon counsel for defendant offered in evidence a deed from William Mahaffey to Nelson Cooper, which said deed is in the words and figures following, to-wit:

THIS INDENTURE, Made the 15th day of June, in the year of our Lord, one thousand nine hundred and four, between William Mahaffey, single man, party of the first part, and Nelson Cooper (Both of Cascade Co. Montana,) the party of the second part, WITNESSETH: That the said party of the first part, for and in consideration of the sum of One Dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged does by these presents grant, bargain, sell, convey and confirm, unto the said party of the second part, and to his heirs and assigns, forever, the following described real estate, situated in the County of Cascade, and State of Montana, to-wit:

South half ( $\frac{1}{2}$ ) of North west quarter ( $\frac{1}{4}$ ), of Section Eleven (11), South east quarter ( $\frac{1}{4}$ ) of



North east quarter ( $\frac{1}{4}$ ), Northeast quarter ( $\frac{1}{4}$ ) of Southeast quarter ( $\frac{1}{4}$ ), Section ten (10), all in Township Nineteen (19) North Range Three (3), West, containing One hundred sixty (160) acres.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever; as well in law as equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof with the appurtenances.

TO HAVE AND TO HOLD, all and singular, the above mentioned premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns, forever. And the said party of the first part, and his heirs, does hereby covenant that they will forever warrant and defend his right, title and interest in and to the said premises, and the quiet and peaceable possession thereof, unto the said party of the second part, his heirs and assigns, against the acts and deeds of the said party of the first part, and all and every person or persons whomsoever lawfully claiming or to claim the same.

IN WITNESS WHEREOF, The said party of the first part has hereunto set his hand and seal the day and year above written.

WILLIAM MAHAFFEY. (SEAL)



Signed, Sealed and Delivered in the presence  
of Will Bunnell.

State of Montana,

County of Cascade.—ss.

On this 15th day of June, in the year of our Lord one thousand nine hundred and four before me, Will Bunnell, a Notary Public in and for said county of Cascade, State of Montana, personally appeared William Mahaffey, a single man, of Cascade, Cascade County, Montana, known to me to be the person whose name subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this Certificate first above written.

WILL BENNETT,

Notary Public in and for Cascade  
County, State of Montana.

(Notarial Seal)

(Endorsed: Warranty Deed. William Mahaffey to Nelson Cooper. Dated June 15, 1904. Recorded at the Request of.....  
January 29th A. D. 1910, at 9:15 A. M. in 58 of Deeds page 283. David M. Wood, County Recorder. By Thomas T. Davies, Deputy.)

(Endorsed: No. 949. U. S. vs Mahaffey. U. S. Dist. Court, Montana.

Deft's Exhibit 2. Filed July 1, 1915. Geo. W. Sproule, Clerk.)

(TESTIMONY OF NELSON COOPER IN HIS OWN  
BEHALF).

NELSON COOPER, being first duly sworn in his own behalf, testified as follows:

Direct Examination.

(By MR. WALSH.)

My name is Nelson Cooper and I am the intervenor in this case. I am 23 years old. I was 23 last October. I was acquainted with William Mahaffey. I did not know just where he did live but he used to come past our place with a black horse and cart. He used to come over for me to go fishing with him. He would always come from west of us. I know now that this land lies west of our place. In the summer time in nice weather I might have gone fishing with him every Sunday and sometimes once a month; or every Sunday. We were somewhat chummy as between boy and man. He always brought a handful of candy along and of course I was glad to go with him. We caught quite a few fish. He would bring me back home and then go on home alone, always going to the west. I was never out where he lived. I know now where the Mahaffey ranch is located, but I didn't know until after it was bought for me. I don't know when I first saw it, but it must have been sometime after it was bought for me. I don't remember of any improvements on it when I was there. I know that it was fenced and that there was a reservoir on it. It was a pretty good reservoir must have been 5 or 6 feet deep in places.

I went by it several times I used to go by there to get cattle out of the fields. I knew that other boys would go there to swim. There was a place about three quarters of a mile below where the boys would go in swimming whenever they felt like it. I know I went in there once one Sunday, with some other boys. I remember H. H. Nelson. I knew that my father had some money Mr. Nelson had given him for me. I have known about that ever since I can remember. I knew that my father was using it for me. I bought some calves with it at one time. My father heard about them and thought it would be a good experience for me so I went down and bought them. I paid I think \$13. or \$14. per head for them, some thing like that. I kept them around the ranch for a while and I think the next year sold them. I sold them to my father. I made \$80. or \$90. or \$100 anyway. I never had any knowledge that Mahaffey had not complied with the law as to residence or improvements on his homestead. I never had any knowledge that the Government claimed he had not complied with the law. Insofar as I am concerned in the transaction I was acting in good faith in making the purchase. My father told me what he had done with reference to buying the land for me as soon as he had bought it. I was glad to get because I thought 160 acres was a good deal of land. I thought I was getting to be a landed proprietor.

## Cross-Examination.

(By MR. WOODY.)

The land was purchased for me by my father in 1904. I was 11 or 12 years old at that time. I am twenty three now. I knew that same night after the land was purchased that it had been purchased for me. It was after the land was purchased, after the purchase was completed that I first knew about it. I didn't know anything about his intention to purchase it before it was purchased. I must have known Mahaffey two or three or four years before the land was purchased. He was not in the employ of my father that I know of. He used to drive by our place on the way to town. He was not in my father's employ that I know of. I know where my father's camp is now in the neighborhood of the Mahaffey land, but I didn't know at that time. Before the purchase of the land I was never down to the Mahaffey homestead. I was not there until some time after. I remember about the reservoir being there and the ditches. I remember about a fence on one side, I don't remember about the others. I don't know whether or not there were any roads. After the land was purchased I guess it was used right in with all our other land. It was used by my father in connection with all this other land. I didn't pretend to make any use of it myself, only what few head of stock I had, but I don't suppose that would be much. My father used it in connection with his other land.

Re-Direct Examination.

I always had a few head of stock, I always kept a few head of cattle.

**(TESTIMONY OF WILLIAM KIRKLAND FOR THE INTERVENOR).**

WILLIAM KIRKLAND, being first duly sworn for and on behalf of the intervenor, testified as follows:

Direct Examination.

(By MR. WALSH:)

My name is William Kirkland. I live near Fraser, in Dawson County, Montana. From 1900 up to 1910 I resided in Cascade. I was acquainted with William Mahaffey. I knew him off and on since about 1900. I know the land known as the Mahaffey land. I may have passed over it before that. I saw that land when Mahaffey was there. There was a good log house on the land, I don't remember ever being in the house. It was a log house about 14 by 16 may be 18. It had a board roof and was pointed up; that was plastered between the logs. I saw a stove pipe through the roof. I saw a reservoir on the land, it was a pretty good reservoir and there was a ditch leading from the reservoir. There was a stream running through the land. The house was in what I would call a canyon. There was a fence on the east side of it, that is all the fence I ever noticed. I saw a fence running in the other direction but as to that being his fence I couldn't say. I worked for Frank



D. Cooper off and on from 1900 and 1911. I worked at different things. Part of the time I was acting foreman, part of the time choreboy, that is doing anything that he would put me to do. I think I was foreman over a bunch of men during the year 1904. I had charge of the lambing there. Mahaffey worked for me a short time in the spring of 1904. He did not work for me at any other time. I hired him and paid him off. I hired and fired my own men, and didn't report to Mr. Cooper until afterwards, probably quite a while afterwards. I suppose I reported the hiring of Mahaffey when we settled up. I don't think Mahaffey worked for me more than a week or ten days. At that time I was working at what was called the Benton road shearing sheep, and Mahaffey stopped there when he worked for me. He went there horseback. I guess he went away some nights there was a number of nights I was not there so I could not say. This was about three miles from his place. If he wanted to he could go to his place nights on horseback and return the next morning. I noticed Mahaffey traveling to and from the direction of his ranch, but cannot state where he was going either way. I noticed him passing more than one year, probably half a dozen times a year. I was never well acquainted with Mahaffey. I did not know him until he worked for me and then couldn't say that I was acquainted with him any more than to know him by name. I am a married man with a family.



## Cross-Examination.

(By MR. WOODY.)

I worked for Mr. Cooper from 1900 up to 1910 or 1911. I couldn't say that I became acquainted with Mahaffey until he worked for me in 1904. That was the first time I became personally acquainted with him. I knew who he was from seeing him. Before the spring of 1904 I knew where his homestead was. I was down to his homestead. I probably had occasion to go by there. I don't remember if it was the spring of 1904 that I was at his cabin, it was before that I think. It was a log cabin 14 by 16 or 18 feet. It had a roof on it, a board roof. I couldn't say as to the floor. It had a door and window in it. It had a door casing and a window casing in it. It had a door so that it could be closed up. It was chinked up. There was a stove pipe going through the roof. I didn't say that he lived there at that time. I never say Mahaffey on the land, and I never saw him at the cabin. I hired Mahaffey to work for Cooper. I think he came to the shed that I was at. Cooper had a sheep camp not far from Mahaffey's homestead. I do not know whether Cooper used that sheep camp in 1904 or not. Sometimes he used it. He used it at times through the winter but there was times he didn't use it in the winter or summer time either. I know that Mahaffey was employed for a week or ten days, but at that particular time he was not working at that sheep camp. I don't know whether he worked at that

particular sheep camp in 1904.

**(TESTIMONY OF RICHARD T. LOSS FOR INTERVENOR).**

RICHARD T. LOOS, being first duly sworn, for and on behalf of the intervenor, testified as follows:

(By MR. WALSH.)

My name is Richard T. Loss. I live on a ranch 12 miles west of Cascade. I have lived there 25 years. I am a married man and have a family. I knew a man named William A. Mahaffey, I knew him 15 or 20 years. I know about his taking up a homestead. I am acquainted with that land. Before that he worked on the N. S. when I worked there. He worked there quite a while. That is 6 Miles west of Cascade. It is not a Cooper ranch. He worked there several years, three or four years. I know about the time he took up this land. He didn't work on the N. S. ranch after that. It has been several years ago since I quit working on the N. S. ranch. I have been by the Mahaffey land several times, I have been up in that country at different times. Some of that land is rough, some level ground and some a kind of sandy loam. It is only fit for grazing. It is the same class of land as the Northern Pacific land in that vicinity. I saw Mahaffey on the land once or twice. I saw a log shack, a cabin, on the land. I think it was about 12 by 14 by 16. It had a board roof. It was daubed or pointed as they call it. I was never in the house while he was there. I saw a stove pipe through the roof while he was there. There

was a door and window in the house. I was in the house in 1905 some time, after Mahaffey had made final proof. At that time there was a floor in the house. The door was unlocked. There was a fence on the east side of the land. There were other fences there but I didn't pay much attention to them only as I went through there with the sheep. There were no fences running at right angles with the fences on this side. There was no corral or stable there. There was a reservoir and one ditch there. At that time it was about as good a place as the ordinary Montana homestead. His place compared with the ordinary homestead of the Montana Settler. I knew Mahaffey for some years. Mahaffey was considered a pretty good man in that community. He stayed there and took care of that ranch in the winter when they had a good deal of stock there.

Cross-Examination.

(By MR. WOODY.)

I knew Mahaffey for about 20 years. From the time he filed on the land up to the time he made final proof I was across the land several times. I was there two or three times. I was really by his place twice. That was in 1903 and 1904. It was before he made his final proof. I saw Mahaffey there twice. I saw him around but didn't pay much attention to him, I was riding by, I was not down to his cabin at that time. Mahaffey was doing some thing around there. It was a log cabin, with a roof, door and window. It was a board

floor. It had door and window casings and a door and window in place. I was not inside the cabin at that time. I didn't notice any corrals there. There was a fence on the east side. I never saw Mahaffey there any other time. I don't know that Mahaffey was working for anybody at that time. He was not there all times.

**(TESTIMONY OF CHARLES WISE FOR INTERVENOR).**

CHARLES WISE, being first duly sworn for and on behalf of the intervenor, testified as follows: (By MR. WOODY.)

My name is Charles Wise. I live in Dawson County. From 1898 up to 1906 I didn't live in any particular place. I was all over the country. I lived in the vicinity of St. Peter's Mission a part of the time. I knew William A. Mahaffey. I knew him for quite a while. I am acquainted with the Mahaffey homestead up west of Cascade. I have been on the land but cannot remember the date, it has been so long ago. I saw Mahaffey living on the land. I guess I was there three or four times altogether while he was living there. These visits were all in one year. I don't remember what year it was. He had a log cabin on the place about 16 by 18 or some thing like that. It had one window and one door I think. It had a roof and a floor. I was in the house, I knew him and I visited him there. I stopped there about a week altogether, some thing like that, or five days. I ate there and slept there. He had a bed and table and chairs there, one chair I think, like you

would have in any common cabin. He had a small place boxed up for dishes and things, a bachelor's cupboard. The cabin was what you would call pointed I suppose, kind of muddled up like they do all those old cabins, just plastered between the logs. There was a stove pipe through the roof. There was some kind of little corral in the bend of the creek. It was a kind of little place where he kept two or three saddle horses. It was in the brush but I didn't pay much attention to it. I saw a reservoir there. I had something to do with the building of that reservoir, I worked on it. I helped him three or five days. During that time I ate and slept there. There was a ditch there. The dam across the reservoir was about five feet high, it was thrown across the creek or gulch. Mahaffey had two or three horses there at that time, that was all I saw. There was some fence there, but not a great deal, I never went around it. I did not notice any fence running across from the east fence. He had a little jag of wood laid up like a man would in any camp, a small one. There was part of a load of hay just thrown off for his horses I suppose.

#### Cross-Examination.

(By MR. WOODY.)

I was there several times all during one year. I don't know what year it was, but it seems to me like 1905. I am sure I never paid much attention and it was so long ago I have forgotten. I saw the



cabin at that time. It was chinked up, had a roof and a board floor, one window and one door casing and a door and window in place. He had some furniture, a stove, one chair and a little table he had made. I was there perhaps a half a dozen or three or four times that year, I cannot remember. It was along in the fall when I was there. Mahaffey was there every time I went there. He had no other buildings on the place, except that little cabin I have told you about. It was only a small corral, made of poles. It had no roof on it just put up for a horse corral. I don't know whether it was enclosed with a fence or not I never was around the fence. There was a fence on the east side. He had two or three head of horses there. For a living he worked at the N. S. ranch, but I don't know where he worked when he left there. I used to call on him because I knew him. I had no particular business there only when I worked on that reservoir. I think it was 1905 I was there as well as I can remember.

Re-Direct Examination.

(By MR. WALSH.)

I think it was after he made his final proof that I was there but I aint sure.

Intervenor rests.



**REBUTTAL.**

FRANK KINSEY, being called in rebuttal, testified as follows.

Direct Examination.

(By MR. WOODY.)

I am acquainted with Frank D. Cooper. From April, 1904, when I first knew the Mahaffey land up to the middle of June, 1904, I saw Frank D. Cooper on the Mahaffey land once. At that time he was right close to the cabin, probably seventy five or one hundred yards away. That was before Mahaffey made his final proofs. Before Mahaffey made his final proofs I saw Frank D. Cooper in and around there quite often.

Cross-Examination.

(By MR. WALSH.)

When I saw him at the cabin I was talking to him, about seventy five or one hundred yards from the cabin. I was coming across the creek and he was coming up the creek and we met. At other times I saw him in that vicinity, some times away a half a mile, at other times a mile and three miles, he was all over that country. At that time I lived two or two and a half miles away from the Mahaffey place. I spent quite a bit of time around the land riding. It was along in April, 1904, some time that I saw Cooper there. I couldn't say just what part of April it was. It was not in May but I think in April.

W. L. KINSEY, being called in rebuttal, testified as follows:

I know Frank D. Cooper and have known him since the fall of 1886. During the year 1904, before Mahaffey made his final proofs I never saw Cooper on the Mahaffey land but I seen him near it. I saw him in that vicinity. I know one time he was at my place and at another time I saw him at the Crown Butte ranch. The closest I saw him to the Mahaffey land that spring was probably half or three quarters of a mile.

(Cross-Examination.)

(By MR. WALSH.)

My place is about two miles from the Mahaffey place. I saw Mr. Cooper at my place one time. The next time I saw him at the Crown Butte ranch. The Crown Butte ranch adjoins the Mahaffey homestead.

JOHN GARDISPEE, being called in rebuttal, testified as follows, to-wit:

(By MR. WOODY.)

I have known Frank D. Cooper since 1900. During the years 1903 and 1904 I never saw Cooper on the Mahaffey land. I never seen him around that place only what they call the Crown Butte ranch. I know where his sheep camp was on the adjoining place, and I saw Cooper there. I saw him there in the spring of 1904, but I couldn't say how many times.

Cross-Examination.

(By MR. WALSH.)

I never saw him on the Mahaffey land. I saw him on his own ranch, the Crown Butte Ranch. That would be three quarters of a mile from the Mahaffey land.

JOHN GARDISPEE JR., being recalled in Rebuttal, testified as follows:

I know Frank D. Cooper and have known him since 1900. During the year 1903 and the spring of 1904 I never saw him on the Mahaffey place. I never saw him in that vicinity except on his own land, about three-quarters of a mile from the Mahaffey land.

That the foregoing is a narrative of all the testimony introduced and given on the trial of said action.

WHEREFORE plaintiff prays that the above and foregoing narrative of the testimony taken on the trial of said cause, be settled, approved and allowed by the above entitled court as a true, full and complete statement of all the evidence taken and given on the trial of said cause for use on the appeal taken to the United States Court of Appeals for the Ninth Circuit.

BURTON K. WHEELER,

United States Attorney,  
Solicitor for Plaintiff.

(Certificate of Bourquin, D. J., Re Statement of Evidence on  
Appeal, etc.)

**CERTIFICATE.**

I, the undersigned, Judge of the District Court of the United States for the District of Montana, hereby certify that the foregoing statement of evidence is a true, complete and properly prepared narrative of all the evidence adduced on the trial of the above entitled action, and I do further certify that the same has been duly served and filed as required by the rules of the court.

Dated this 21 day of Dec., 1915.

BOURQUIN,  
Judge.

(Indorsed) Title of Court and Cause. Statement of Evidence on Appeal. Filed Dec. 21, 1915. Geo. W. Sproule, Clerk.

That thereafter, on November 22nd, 1915, Petition for Appeal and Order allowing the same was duly filed and entered herein in the words and figures following, to-wit:

(PETITION FOR AN ORDER ALLOWING APPEAL.)  
IN EQUITY NO. 949.

*In the District Court of the United States, District  
of Montana.*

UNITED STATES OF AMERICA,  
*Complainant.*

vs.

WILLIAM A. MAHAFFEY,  
*Defendant.*

and

NELSON COOPER,  
*Intervenor.*

**APPEAL AND ALLOWANCE.**

The above named complainant, the United States of America conceiving itself to be aggrieved by the decree entered herein on the 31st day of July, A. D. 1915, in the above entitled proceedings, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and prays that an appeal be allowed and that a citation issue as provided by law, and that a transcript of the records and proceedings and papers upon which said decree was based, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit.

B. K. WHEELER,  
Solicitor for Complainant.

The foregoing petition is hereby granted and an appeal is allowed.

Dated this 22 day of November, 1915.

GEO. M. BOURQUIN,  
Judge of said District Court.

(Indorsed) Title of Court and Cause. Appeal and allowance. Filed and entered Nov. 22, 1915. Geo. W. Sproule, Clerk.

That on Nov. 22nd 1915 an Assignment of Errors was duly filed herein in the words and figures following, to-wit:

IN EQUITY—No. 949.

*In the District Court of the United States, District of Montana.*

UNITED STATES OF AMERICA,  
*Complainant.*

vs.

WILLIAM A. MAHAFFEY,  
*Defendant.*

and

NELSON COOPER,  
*Intervenor.*

#### ASSIGNMENT OF ERRORS.

The complainant in this action, in connection with its petition for an appeal herein, hereby makes the following assignment of errors, which it avers occurred in this cause:

1. The Court erred in finding the evidence taken



in said cause, at the trial thereof, was insufficient to sustain the allegations of the bill of complaint herein;

2. The court erred in ordering a decree herein in favor of the defendant and intervenor and against the complainant, dismissing complainant's bill of complaint;

3. The court erred in entering a decree herein in favor of the defendant and intervenor and against the complainant, dismissing the complainant's bill of complaint.

WHEREFORE, the said complainant, United States of America, prays that the said decree of the said District Court of the United States for the District of Montana, rendered and entered herein in the above cause, be reversed.

B. K. WHEELER,

United States Attorney,  
District of Montana,  
Solicitor for Complainant.

(Indorsed.) Title of Court and Cause. Assignment of Errors on appeal. Filed Nov. 22, 1915. Geo. W. Sproule, Clerk.

That on November 22nd, 1915, a Citation was duly issued herein which is hereto annexed and is in the words and figures following, to-wit:

*In the District Court of the United States, District  
of Montana.*

UNITED STATES OF AMERICA,

*Complainant.*

vs.

WILLIAM A. MAHAFFEY,

*Defendant.*

NELSON COOPER,

*Intervenor.*

**CITATION ON APPEAL. (ORIGINAL).**

To Nelson Cooper, Intervenor and Appellee, and to James A. Walsh, Esq., his attorney and solicitor; Greeting:

You and each of you, are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, State of California, within thirty days from the date hereof pursuant to an appeal filed in the office of the Clerk of the District Court of the United States for the District of Montana, wherein the United States of America is appellant and William Mahaffey and Nelson Cooper are appellees, to show cause, if any there be, why the decree in said appeal mentioned should not be corrected and reversed and speedy justice should not be done to the parties on their behalf.

WITNESS, the Honorable George M. Bourquin, Judge of the United States District Court, District of Montana, this 22nd day of November, 1915.

GEO. M. BOURQUIN,

Judge of the District Court of the United  
States, for the District of Montana.

Service of the within citation and receipt of a  
copy thereof this 22nd day of November, 1915, is  
hereby acknowledged and admitted.

JAMES A. WALSH,  
Solicitor for Intervenor Nelson Cooper.

(Indorsed) No. 949. United States of Amer-  
ica vs. William Mahaffey Defendant. Nelson  
Cooper Intervenor. Citation on Appeal. Filed  
Nov. 22, 1915. Geo. W. Sproule, Clerk.

That thereafter, on December 13th, 1915, an or-  
der extending time to file record on appeal was en-  
tered herein as follows:

*In the District Court of the United States, District  
of Montana.*

UNITED STATES OF AMERICA,  
*Plaintiff.*

vs.

WILLIAM A. MAHAFFEY,  
*Defendant.*

NELSON COOPER,  
*Intervenor.*

**ORDER EXTENDING TIME TO PREPARE RECORD ON  
APPEAL.**

Upon good cause shown, it is hereby ordered that  
complainant and appellant in the above entitled  
cause, may have thirty days in addition to the time  
allowed by the rules of the court within which to

have prepared and certified up to the Circuit Court of Appeals the record on appeal herein.

Dated this 13th day of December, A. D. 1915.

GEO. M. BOURQUIN,  
Judge.

(Indorsed) Title of Court and Cause. Order Extending time to prepare Record on Appeal. Filed Dec. 13, 1915. Geo. W. Sproule, Clerk. By Harry H. Walker, Deputy Clerk.

Thereafter, on January 4th, 1916, appellant duly served and filed herein its praecipe for a transcript of the record on appeal herein, together with affidavit of service thereon which is in the words and figures following to-wit:

*In the District Court of the United States, District of Montana.*

UNITED STATES OF AMERICA,  
*Complainant.*

vs.

WILLIAM A. MAHAFFEY,  
*Defendant.*

NELSON COOPER,  
*Intervenor.*

**PRAECIPE FOR TRANSCRIPT OF RECORD.**

To Nelson Cooper, Intervenor and Appellee, and to James A. Walsh, his solicitor;

The undersigned, solicitor for complainant and appellant herein, hereby files and serves upon you its praecipe, in conformity with the rules of court,

indicating the portions of the record in the above entitled cause to be incorporated into the transcript on appeal herein, and which said portions of said record you are hereby notified the said complainant and appellant will incorporate and include in the record on appeal herein:

Said portions are as follows:

1. The Bill of Complaint.
2. The Subpoena in Equity.
3. Petition for Order directing service by publication.
4. Affidavit of Publication.
5. Order Pro Confesso as to the defendant William A. Mahaffey.
6. Petition in Intervention.
7. Amended Answer of Intervenor.
8. Replication to amended answer of intervenor.
9. Decree made and entered on July 31st, 1915.
10. Opinion and decision of the court rendered and filed July 30, 1915.
11. Notice of Motion to approve Statement of Evidence on appeal.
12. Statement of evidence on appeal prepared in narrative form in pursuance of the rules of court, and certified to by the Judge of said court as a correct, true and properly prepared narrative of the evidence.
13. Copy of appeal and allowance thereof by the court.
14. Assignment of errors accompanying appeal

and allowance.

15. Citation on appeal and admission of service by intervenor.

16. Order extending time for completing and transmitting the record on appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit.

17. Copy of this praecipe.

The entire judgment roll as the same appears of record in the office of the clerk of the above entitled court is not included herein, as only those portions of such judgment roll which are specified in paragraphs numbered 1 to 9 inclusive of this praecipe are considered necessary for the purpose of the appeal herein.

BURTON K. WHEELER,

United States Attorney, District of Montana.

Solicitor for Complainant and Appellant.

State of Montana,

County of Lewis and Clark.—ss.

HOMER G. MURPHY, being first duly sworn, deposes and says:

That he is over the age of twenty-one years, and that on the 4th day of January, 1916, he served the foregoing praecipe upon James A. Walsh, solicitor for Nelson A. Cooper, intervenor and appellee, in the above entitled cause, by leaving in the office of said James A. Walsh, situated in the Power Block in the City of Helena, State of Montana, a full complete, and true copy of the said praecipe, at the hour of 10:30 A. M.; the said office being



then closed and no one being therein at said time and place; and a said copy being left in said office by being inserted under the door thereof; that the office aforesaid is the place of business and the office of the said James A. Walsh, solicitor as aforesaid.

HOMER G. MURPHY.

Subscribed and sworn to before me this 4th day of January, 1916.

S. C. FORD,

(Notarial Seal)

Notary Public for the State of Montana, residing at Helena. My commission expires Sept. 10, 1918.

Endorsed: Filed Jan. 4, 1916. Geo. W. Sproule, Clerk.

**CLERK'S CERTIFICATE TO TRANSCRIPT OF RECORD.**

United States of America,  
District of Montana.—ss.

I, George W. Sproule, clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, The United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume, consisting of 111 pages, numbered consecutively from 1 to 111, inclusive, is a true and correct transcript of the pleadings, process, orders, decree, decision, and all other proceedings in said cause required to be incorporated in the record on appeal therein by the praecipe of appellant for said record on appeal, including said praecipe, and of the whole thereof,

as appears from the original records and files of said court in my possession as such clerk; and I do further certify and return that I have annexed to said transcript and included within the paging thereof the original citation issued in said cause.

I further certify that the costs of the transcript of record amount to the sum of fifty and 40/100 dollars and have been made a charge against appellant.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court at Helena, Montana, this 14th day of January, A. D. 1916.

Geall D. Bronle  
Clerk United States District Court, District of Montana.